were referred to, and they all seemed to me to show that though Courts of Appeal are unwilling to interfere with the award made in an Inferior Court, yet that in some cases they would do so if the award was in excess of that justly due. But further, they show that a change is very seldom made. I think, however, that here the decision of the Lord Ordinary is very fair.

Lord Shand concurred.

The Court adhered.

Counsel for Pursuer (Respondent)—Solicitor-General (Macdonald)—Trayner. Agent—Robert Menzies, S.S.C.

Counsel for Defenders (Reclaimers)—Dean of Faculty (Fraser)—Guthrie Smith. Agent—Henry Buchan, S.S.C.

Saturday, March 9.

FIRST DIVISION.

[Sheriff of Ayrshire.

FULTON *v.* EARL OF EGLINTON.

Succession—Service — Exhibition ad deliberandum *—Writ.*

A party who asks for exhibition of a charter *ad deliberandum* must show that he has an interest to do so.

Circumstances *held* insufficient to establish that a party had such an interest.

William Stephen John Fulton, described as nearest and lawful heir of line in general to the deceased James Fulton, farmer in High Warwickhill, in the parish of Eglinton, presented this petition in the Sheriff Court of Ayrshire, against the Earl of Eglinton, praying the Court to ordain the defender to deliver to the pursuer, or otherwise to produce and exhibit to the pursuer, a Crown charter of the lands and barony of Eaglesham and Eastwood in favour of Archbald Lord Montgomerie, Eleventh Earl of Eglinton, and the other heirs therein mentioned, dated on or about 23d February, and sealed on or about 8th May 1778.

The pursuer stated that he had been served nearest and lawful heir of line in general to the deceased James Fulton, who was his great grandfather. He further stated that "by the charter of registration under the Great Seal of the lands, lordship and barony of Eaglesham and Eastwood, and others, in favour of Archbald Eleventh Earl of Eglinton, dated 23d February 1778, written to the Seal and registered 8th May 1778, the lands, lordship, and barony of Eaglesham and Eastwood, and others, were granted and conveyed to the said Archbald Eleventh Earl of Eglinton, and the heirs-male of his body, whom failing to the deceased James Fulton or Fultoune, farmer in High Warwickhill, and the heirs-male of his body;" also that the eleventh Earl died on 30th October 1796 without male issue, and that he, as nearest and lawful heir-male of the body of James Fulton was entitled to succeed to the said lands. He pleaded,—"The pursuer as heir-male of line in general to the deceased James Fulton or Fultoune, his great-grandfather, and as such entitled to succeed as substitute heir of tailzie to the lands, lordship, and barony of Eaglesham and Eastwood and others, and the lands of Helenton Mains, is entitled to delivery, or at least to production and exhibition as concluded for."

The defender stated that he did not know of the existence of any such deed, but that he had in his possession a "charter of registration by Archbald Earl of Eglinton of the lordship of Eaglesham, &c., dated 23d February 1778, written to the Seal, registered and sealed 8th May 1778, in favour of Archbald Earl of Eglinton, and the heirs of his body whom failing to the heirs destined to succeed to the lands and others thereinafter disponed by the former settlement thereof," a charter of the same date as that which the pursuer asked to have exhibited. He pleaded, *inter alia*, that the action was irrelevant, and that the pursuer had no title to insist.

The Sheriff-Substitute (Paterson) repelled the defender's preliminary pleas, but on appeal the Sheriff (Campbell) gave effect to them, and dismissed the action.

The pursuer appealed to the Court of Session, and when the case came up first, was ordered to amend his summons to the effect of deleting the conclusion of delivery, and adding to the conclusion for exhibition "in the hands of the Clerk of Court," and further to amend his statement of facts.

Argued for him—According to the general rule the pursuer was entitled to the best evidence. This deed was not *in publica custodia*, but in the hands of a private party, and the pursuer was entitled to see the deed itself. *Alva* v. *Freeholders of Stirlingshire*, M. 8857, note. The heir in apparency was entitled to see all deeds that might give him the means of determining whether he was to take up the succession or not. This had been so held even where no particular deed was condescended on, so that the discrepancy betweeen the description of the deed given in the prayer of the petition and that given in the condescendence was immaterial—*Adair*, M. 3992; *Swinton*, 1633, M. 4006; *Pringle*, M. 4019; *Bankton*, iii. 5, 7; and corresponding passages in Stair and Bell's Principles.

The pursuer offered, if the Court thought it expedient, to place the deed in his possession in the hands of the clerk for inspection by the Court. It was stated for him at the discussion that James Fulton predeceased the eleventh Earl of Eglinton and besides that the records showed the destination to be that which the defender said it was, not that which the pursuer maintained.

At advising—

Lord President—The Sheriff on 17th January last sustained the defender's 4th and 5th pleas-in-law, which are pleas objecting to the relevancy of the action and the title of the pursuer; then he found that "the pursuer has not set forth a sufficient title to sue, and that his statements on record are not sufficient to support the prayer of the petition;" and accordingly he dismissed the action. I am of opinion that the Sheriff was right. But the case is not exactly in the same position as when that interlocutor was pronounced, for we have had an amendment of the record since the case came here, and we have

to consider the relevancy of the action, and the title of the pursuer with reference to the record as it now stands.

The pursuer avers that he is the great grandson of James Fulton, farmer in High Warwickhill, in the parish of Dreghorn, and that he has been served heir of line in general to the said James Fulton. We may assume that that is so. Then he proceeds to state that by a Crown charter of resignation "in favour of Archbald Eleventh Earl of Eglinton, dated 23d February 1778, written to the Seal, and registered 8th May 1778, the lands, lordship and barony of Eaglesham and Eastwood, and others, were granted and conveyed to the said Archbald, Eleventh Earl of Eglinton, and the heirs-male of his body, whom failing, to the deceased James Fulton or Fultoune, farmer in High Warwickhill, and the heirs-male of his body." That charter, he says, was produced in certain proceedings in 1786, was borrowed by the Earl of Eglinton of the time, and is now in the possession of the defender. The form of the prayer in which he asks for exhibition of this charter, is this—"that the Court should ordain the defender to produce and exhibit to the pursuer, in the hands of the Clerk of Court, the Crown charter of resignation of the lands, lordship and barony of Eaglesham and Eastwood, and others, in favour of Archbald Lord Montgomerie, Eleventh Earl of Eglintoune, and the other heirs therein mentioned, dated on or about 23d February, and sealed on or about 8th May 1778." The description of the charter given there is not the same as that given in the statement of facts, and the respondent denies that any such charter as that described in the statement of facts is in existence, but there may very well be a charter corresponding to the more general description given in the prayer. The Earl of Eglinton does not dispute that there is a charter of the same dates in favour of Archbald Earl of Eglinton, and the heirs of his body, whom failing, to the heirs called by the previous settlement of the estate. Now, if we were to grant the prayer of the petition, the petitioner would be entitled to obtain exhibition of this charter, which the defender admits he possesses.

The first question therefore is—Is the petitioner entitled to demand production of the charter which the Earl of Eglinton possesses? He has not shown and cannot show that he has any interest in it. That charter contains at all events no destination in favour of James Fulton or any one with whom the petitioner says he can connect himself. There stills remains the question, Whether the petitioner is entitled to recover the charter, which may be in existence, containing the destination described by him in his condescendence? It would be, to say the least of it, a very strange thing that there should be two charters in existence of the same date, one containing a destination to the Earl of Eglinton and the heirs male of his body, whom failing to James Fulton and the heirs male of his body and the others a destination to the Earl of Eglinton and the heirs of his body whom failing to the heirs of the former investitures.

But the question is—Has the petitioner made out his right to demand exhibition of such a charter? He says that he requires to have inspection of that charter in order that he may deliberate and be advised whether or not he should enter as heir-male of the body to the deceased James Fulton. Now, we have it stated that James Fulton predeceased Archbald Eleventh Earl of Eglinton by ten years. The succession to these estates therefore never opened to him; he never was in possession of the estate; he never had any right or title to it; he never even was in apparency; he predeceased the time when he could have had a right of any kind to the estate.

Plainly, therefore, the petitioner's service as heir-male of the body of James Fulton will not advance him one step towards his object, for there was nothing in his *hæreditas* to take up. If he can make out that he is heir of provision to the eleventh Earl of Eglinton, that will be a very different matter, and in the course of that proceeding he may have to show his relationship to James Fulton in order to connect himself with the Earl of Eglinton. But the proceeding in aid of which this petition is brought being a useless one, the petition itself ought, I think, to be refused.

I am therefore of opinion that the petitioner has no title to see this charter, and that we should adhere to the Sheriff's judgment.

Lord Deas — The defender's counsel made what I thought a very fair offer, viz., to produce the charter of 1778 in the hands of the Clerk for inspection by the Court. I confess I do not see what harm there could be in that. There is no doubt, however, that it is a serious thing to ask a party to open his charter-chest and produce his old charters, and the party who asks that must show that he has an interest to do so. He must make out a very consistent and clear case to warrant exhibition even in the hands of the Clerk of Court. I am not satisfied that the petitioner has done that so far as to justify me in dissenting from your Lordship.

Lord Mure and Lord Shand concurred with the Lord President.

The Court adhered.

Counsel for Pursuer (Appellant) — Hunter. Agent—Neil M. Campbell, S.S.C.

Counsel for Defender (Respondent) — Blair. Agents—Hunter, Blair, & Cowan, W.S,

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Saturday, March 9.

SECOND DIVISION.

[Exchequer Cause.

GOSLING *v.* WILLIAM BROWN.
GOSLING *v.* WALTER BROWN.

Revenue—Gun Licence Act 1870 (33 *and* 34 *Vict. c.* 57), *sec.* 7, *sub-sec.* 4 — *Son of Tenant-Farmer shooting Vermin under Instructions of latter, who alone had a Licence.*

A tenant-farmer holding a gun licence under the Gun Licence Act 1870 instructed his sons, who held no licence, to carry his gun to scare birds and shoot vermin on the