

1612. February 21.

HOME against HOME.

No 96.

IN an action of improbation pursued by Patrick Home of Polwarth against Robert Home of the Heugh, it was craved, that if the defender succumbed in proving of the evidents to have been in the pursuer's hands, they should be heard to produce the same thereafter, according as was decided betwixt Wamphray and Bonnington, No 95. p. 6681. THE LORDS refused the desire of the party; and sicklike the LORDS would have the defenders to say that the charter was made by Polwarth to Robert Home of the Heugh, because Robert his own evidents, notwithstanding that Robert was infest *secundum tenorem cartæ conficiendæ*.

Kerse, MS. fol. 205.

* * Haddington reports the same case :

IN the improbation pursued by the Laird of Polwarth against Robert Home of the Heugh, the Guidman of North Berwick, and others, they excepting against the certification, that the charters called for had been in the hands of the pursuer, his father, guidsir, and grandfather, the LORDS found not that allegiance relevant, unless they would say that the charters had first been in the defenders' or their predecessors' hands, as their own proper evidents, and were thereafter in the pursuer's or his predecessors' hands; for albeit ane man wha has gotten sasine of lands *secundum tenorem cartæ conficiendæ* have made ane charter of the said lands to the person seased to be holden, and have subscribed the same; yet so being, as it is in his own hands undelivered, the party seased may not compel him to deliver him *hoc individuum*, but may call and pursue him to make, subscribe, and deliver to him ane charter, conform to his sasine, whilk may be offered of the worst sort of holding, and strictest conditions, unless the pursuer prove the particular holding and conditions agreed upon. In this cause, the LORDS would not so precisely astrict the defenders to prove that the charters controverted had been in their or their predecessors' hands, and thereafter in the pursuer's predecessor's hands; as if they failed therein, it should not be leisom to them to produce it, as was ordained in the cause betwixt Bonnington and Wamphray, but left that to their own consideration, in the conclusion of the production.

Haddington, MS. No 2407.

1614. December 16. DUKE of LENOX against INHABITANTS of St Andrews.

IN a reduction and improbation pursued by the Duke of Lenox against the Inhabitants of St Andrews, for reduction and improbation of a feu set in *anno*

No 97.

- No 97. 1555, by James, Prior of St Andrews, to them, the LORDS found, they would give certification against the persons summoned, albeit some of the persons to whom the feu was granted were not summoned. *Ratio*, because it divided acres in duty and in clause irritant; but this was well hard for the improbation, for so it could follow, that the evident whilks to be improved, shall be improved for some and not for the hail.

Kerse, MS. fol. 205.

* * * Haddington reports the same case :

IN the action pursued by the Duke of Lenox, Lord of the priory of St Andrews, against the Feuers of the acres of St Andrews, for improbation of their infeftments, and reduction of their feus upon clauses irritant, the LORDS found, that they would grant the certification against the parties called for, decerning their general charter granted to the hail number of the feu of their lands to make no faith for not production, notwithstanding that some of the particular feuers were not called; because they would grant the certification, that that charter should make no faith against the parties called and not producing, *in pœnam contumaciæ*, with express declaration, that the certification should not prejudge the parties, who were not called, and so were not contumacious.

Haddington, MS. No 2589.

1619. December 14. EARL OF WINTON *against* The LAIRD of CORSTORPHINE.

- No 98. FOUND in improbations, that the singular successor may be compelled to produce the evidents made to his author, albeit the apparent heir of the author be not (summoned), where the defender is not able to condescend upon the apparent heir. But this was not found *nisi* where the author is not fully denuded both of property and superiority.—See No 103, p. 6686.

Kerse, MS. fol. 206.

1621. February 20. LO. YESTER *against* LORD BOTHWELL.

- No 99. FOUND that a retour anterior to an infeftment under the Great Seal, granted by King James the First, in anno 1435, produced of the moat of Lochguarret by the Lord Bothwell, which retour was produced by the Lord Yester, of the barony of Lochguarret, bearing David Hay to be served as heir to Thomas Hay his father, in anno 1431, could not be a ground to repel the Lord Bothwell to produce anterior infeftments in the improbation.

Kerse, MS. fol. 208.