

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 infeft *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.