who was infeft by a base infeftment in another part of the same land, with liberty of the said moss, to be holden of the annalzier, and under reversion; to hear it found, that his liberty of the moss should be restricted to the proportion of the land wherein he was infeft, and that he had no liberty in the said moss, but effeiring to the land, as it answered in proportion, as a part compared with the whole land; THE LORDS sustained this process against this wadsetter, albeit the heritor who was standing infeft holden of the superior, and who granted the wadset under reversion only, was not called to the pursuit, to which they found no necessity to call him; but the LORDS found and declared, That what should be done betwixt these parties in this process, should not prejudge him.

Act. ——. Alt. *Baird.* Clerk, *Scot.*

Durie, p. 53.

No 46.
of a part of lands that had a moss in common, for restricting the wadsetter's interest in the commonty, process was sustained against the wadsetter, although the reverser was not called. But the reverser's interest could not be prejudiced.

*** Haddington reports the same case:

IRVING pursued Mr James Forbes to hear and see him decerned not to take any more of the peats of the barony whereof they were portioners, nor effeired to his portion for the use of the inhabitants of his part of the barony. Mr James Forbes *alleged*, That he was only infeft under reversion, and so Blaikburne, his author, should have been called; without whom, no restriction could be imposed upon his land. It was *answered*, That the pursuer knew Forbes to be infeft, and to have done him wrong, but he could not prove whether he was infeft redeemable or irredeemable, and so could pursue none but him who was infeft, and wronged him; not his author.

THE LORDS found relevant; and declared that nothing done betwixt these parties should prejudge Blaikburne or his superiors, otherwise nor accorded of the law.

Fol. Dic. v. 1. *p.* 135. *Haddington, MS. No* 2796.

1662. *February* 8. LORD TORPHICHAN *against* ——.

No 47.
A cognition of marches betwixt vassals, was found valid, though the superior was not called.

THE LORD TORPHICHAN, and certain of his feuars, pursue a reduction of a decreet of the Sheriff, whereby he set down marches betwixt their lands and others, upon this ground, That he did not proceed by an inquest, conform to the act of Parliament, but by witnesses: *2dly*, That he as superior was not called: *3dly*, That the Sheriff had unwarrantably sustained the setting down of marches formerly by arbiters, to be proven by witnesses.—The defenders *answered*, The *first* reason was not objected, and the defenders compearance, it was competent, and omitted: To the *second*, The superior could have no detriment: To the *third*, That the setting down of march-stones being a palpable fact, might be proven by witnesses, whether done by the parties themselves, or by friends

No 47. chosen in their presence, there being neither decreet-arbitral, nor submission in writ.

THE LORDS repelled the reasons, in respect of the answer, and declared, that if the land fell in the superior's hands, by recognition, non-entry, or otherwise, the decreet should not prejudge him if he were not called. *See* PROCESS.

Fol. Dic. v. 1. *p.* 135. *Stair, v.* 1. *p.* 95.

1662. *February.*

The LAIRD of LIVINGSTON *against* The FEUARS of Falhouse.

No 48.
Found in conformity with the above, and seems to be the same case.

THERE being an action of molestation pursued before the Sheriff of Linlithgow, betwixt the Laird of Livingston and the feuars of Falhouse, anent some marches betwixt them, wherein mutual probation was adduced; and it being proven for Livingston, That his author, the Earl of Callander, and the feuars, having submitted the cognition and determination of the marches to indifferent arbiters, they did set the march stones by consent of the parties, in respect whereof the Sheriff decerned the march stones to be fixed, and kept according to the former determination; this decreet being called in question, the reasons of reduction were mainly these two; 1*st*, There was nothing to verify the submission, and it could not be proven but *scripto*; 2*do*, The Lord Torphican, superior to the said feuars, was not called, and now he concurred in the reduction. —To the *first* it was *answered*, That betwixt neighbours, the matter of marches might very well be determined by a verbal reference to indifferent friends, and both submission and determination might be proven *prout de jure*, without writ; To the *second* it was *answered*, That the superior had no prejudice, and consequently no interest; and if the property should fall in his hands by any casuality, a decreet given against him, he not being called, will not prejudge him.

THE LORDS assoilzied from the said reasons, in respect of the answers, which they found relevant. *See* PROOF.

Fol. Dic. v. 1. *p.* 136. *Gilmour, No* 27. *p.* 22.

No 49.
In a declarator of property, which was in effect a fixing of marches, it was found sufficient to call a disponee, though not infeft; and not the disponer who held the feudal right.

1663. *January* 3. NICOL *against* HOPE.

PATRICK NICOL merchant, as heritor of the lands of Easter Grantoun, pursues a declarator of property against Sir Alexander Hope, heritor and possessor of the lands of Wester Grantoun, and to hear and see him decerned to desist from molesting the pursuer in his possession of the lands libelled; and namely, for demolishing that part of a dyke within these few years built within the bounds of the pursuer's lands.—It was *alleged*, That there could be no process, because all parties having interest were not called, viz. the heir of the Laird of Craighall, who stood last infeft in the lands of Wester Grantoun, the defender not being in-