

No 44.
against the
feuars of the
lands, with-
out calling
the superior.

and the L. Wemyss being permitted to mend his precept, and to turn it to a declarator for finding the property of the lands, and others libelled, to pertain to him, as his own property; which action being pursued at his instance and his son's, who was fiar, and himself liferenter, the LORDS found process, and sustained the action at the father's instance, who was liferenter, albeit the fiar was debarred by the defender by horning; seeing the father liferenter might seek this declarator upon the property, that the fee given to his son might be profitable and effectual to him; and this action was not sustained as merely petitory, but as mixed with the possessory, for maintaining of the pursuer's possession, as he libelled within his property, albeit the defender alleged, and claimed contrary property and possession; and also this action was sustained, albeit the defender alleged his property could not be disputed, except that his superior, of whom the defender held the lands wherein he was infest, and whose vassal he was, were expressly called to this pursuit; who not being called, his right could not be questioned, nor he prejudged of his right, by calling of his vassal only, and not calling of himself, who was only the just party who should, and might maintain his own right; which was repelled, and this process and action against the vassal, who was heritor, was sustained. See PROCESS.—LIFERENTER.

Act. Stuart.

Alt. M. Gill.

Clerk, Hay.

Fol. Dic. v. I. p. 135. Durie, p. 697.

1677. November 8.

EARL OF MORAY against The FEUARS of the Salmon-fishing of Ness.

No 45.

In a declarator that the Sheriff of Inverness had right to fish three days in the water of Ness, no necessity was found to call the town, or any but the possessors.

THIS is a declarator that the Earl, by his gift-right sheriffship of Inverness *ad vitam* has right to fish three days in the time called the summer-moon, conform to his possession. *Alleged*, The Sheriff and Town of Inverness are not called. *Answered*, He needs call none but the possessors, let them intimate the distress. THE LORDS repelled the allegiance.

Fol. Dic. v. I. p. 135. Fountainball, MS.

Huntley, as Constable of Inverness, claimed right also.

SECT. XII.

Citation in Declarator of Marches.

1623. February 28.

IRVING against FORBES.

No 46.

In an action against a wadsetter,

IN an action pursued by Irving, who was heritable proprietor and co-partioner of a land, which had a moss belonging to the whole land, against one Forbes,