contra L. Innerwylie Tho in a Decision observed by the Lord Dirleton (12 Decem-
-ber 1674 Mowbray contra Arbuthnot) The Lords modified three Year's Rent
as the single Avail, and inclined to have that observed as a Rule in all
Cases.
There is no Vestige of the Casualty of Marriage in the Feudal Law tho
it be very consistent with it.

Craig (Ibid. § 9 in fin.) relates that this Casualty of Marriage was
not introduced into England before the Reign of K. Henry 3. and came there
from us. The Lord Stair (Lib. 2. Tit. 4. § 37) and Sir George McKenzie (Inst. Lib. 2.
Tit. 5. § 13) are of Opinion that this Casualty of Marriage as well as that of
Ward proceeded from an express Paction betwixt K. Malcolm Canmore and his
Subjects, to whom he feued out the whole Lands of Scotland, reserving the Ward
and Marriage of their Heirs. But it was not Malcolm Canmore but Malcolm 2
that disponed all his Lands to his Subjects. Nor doth his Law express the Re-
servation of the Marriage Casualty, but only of Ward and Relief. However [illegible]
find it mentioned in the old Books of our Law Reg. Majest. Cap. 40. Quon.
Attach. Cap. 91. Some attribute the Rise of this Casualty to the Superior's Power
as Tutor and guardian to the Ward Vassal; without whose Consent the
Vassal ought not to negociate so important an Affair as Marriage. But this can-
not be the true Cause of it; Seeing the Superior's Care as a Tutor should be calculated
for the Advantage of the Pupil, to direct him only in the Choice of a Wife, and
not stretched so far to his Prejudice, as to make his Fee liable to the double Avail
for his marrying against the Superior's Inclination. Others will have this Casualty to
be due for preventing the Vassal's bringing in a Stranger and perhaps an Enemy
to the Superior to be Mistress of the Fee without his Consent. But if that were
the only Reason no Avail of Marriage would be due if the Vassal never married
or married the Superior's Friend or Relation; Whereas in both these Cases the
single Avail may be claimed Stair Ibid. § 44. The Lord Stair (Ibid. § 45. & Lib.
4. Tit. 11. § 3.) doth thus account for the Casualty of Marriage. Ward Holdings
being Fees given out at first for no equivalent Consideration or Value, but
only for a gratefull Acknowledgment by military Service, when the Superior
had Occasion to require it from his Vassal; During the Vassal's Minority
when he was presumed not capable to perform this Service, the Superior re-
=sumed the Fee into his own Hand, without any Obligation upon him to enter-
tain the Heir at that Interval. For remedying such Hardship, the Superior
was afterward made liable to aliment his Minor Vassal Act 25 Parl. 3. J. 4.
In Recompence whereof the former got the Avail of the latter's Marriage
that is the Tocher his Wife brought with her: But had it not paid to him
till the expiring of the Ward; for that it behoved to be applied ad sustinenda
onera matrimonii; while the Profits of the Fee went to the Superior; who

who, tho' obliged to aliment the Heir, was not bound to entertain him in his
Family in a married State. The Superior's Right to the Avail of the Vassal's
Marriage, furnished him an Interest to offer a Match to the Vassal, and if
the Vassal refusing that Match married another Woman, the Avail
was reckoned equivalent to the Tocher he might have had.

The single Avail of Marriage is not penal 3 January 1677 Campbel
contra McNaughton. But it ariseth in Ward Holdings from the Nature of
the Fee, and would be due by the Vassal's attained to the Age of Marriage,
tho he should die unmarried without being required by the Superior to marry.
Nor was the Superior's tacit Consent to the Marriage, by subscribing Wit-
ness to the Vassal's Contract of Marriage, found to exclude this Casualty;
tho' it would seem, that the Superior could ask no more in the Case of such a
tacit Consent, than the Vassal gets of Tocher 25 Feb. 1662 [illegible] con-
tra Keiths. The Lord Stair (Ibid. Tit. 4. § 42) says that the single Avail is
not excluded by the Superior's present or Consent to the Marriage: But this
must be understood of his tacit Consent. For where a Superior expressly consents
to his Vassal's Marriage, no Avail is due. The the Superior upon the Vassal's
acquainting him by a Letter of his Design to marry a certain Gentlewoman,
having returned this Answer to him, that he did not but approve his making a
with that Gentlewoman, and if they should prefer to marry wished them
well; The said Answer given by the Superior was sustained to import his
Consent to the Marriage. Albeit it was pleaded, that such an Answer was only
a civil Complement without any mention of his Interest as Superior, and
without any express License to marry or discharge of his Claim to the Avail
of Marriage 23 January 1677 E. Argile contra McLaughton observed by Dir-
leton.

In Order to make the double Avail which is most unfavourable and pe-
nal due, a fit Person ought to be offered in due Manner to the Vassal's
Heir for a Wife or Husband when marriageable. For if a Match be offered
several Years after when the Heir or Heiress hath agreed upon Marriage
Articles with another, tho the Contract were not subscribed; it may safely
without Contempt of the Superior be refused as a captious and deceitfull Offer
22 Feb. 1678 Drummond contra Stewart. The Person offered must 1. be free and
no other ways engaged to marry another eod. die inter eosd. 2. Must be of a
sound Mind, that is neither Fool nor Simpleton Craig Feud. Lib. 2. Tit. 21. § 7.
in fin. & § 8. Of good Fame and suitable Quality, or equal in Blood and no Dis-
paragement to the Heir: For a Burgess offered to the Heir of a Lord or Baron,
or Gentleman of like Quality tho having only a small Estate, or a Yeoman
offered to a Burgess may be refused; But a Proportion of Means is not required
3 July 1622. French & L. Thorndykes contra Cranstoun Craig Ibid. Stair
Lib. 2. Tit. 4. § 59. 3.ly The Person offered must be of an Age proportionable to
the Heir or Heiress, not very much older: And should have Nothing in the Feature
or