himself liable for an Avail both to him and to the King. Stair Inst. L. 2. tit. 3. §. 83. The L. Stair is of Opinion (Inst. B. 2. tit. 5. §. 52.) that a Ward Superior is not barred from the Avail of his Vassal's Marriage, by the King as a singular Successor to the Superiority in the Way of Purchase, or by a younger Superior's Resignation of the Superiority to his Majesty ad remanendum, who therein utitur jure communi. But Sir James Stewart (Inst.) thinks, that a Person holding some Lands Blench of the King, and others Ward of other Superiors, may resign in the Kings Hand for a new Ward infeftment, of Purpose to have a more easy Superior, wherein utitur jure suo. If a Ward Vassal whose immediate Superior declined to enter him, be infeft by the King supplendo vicem of the Superior, his Majesty thereby gets Right to the Superiority and consequently to the Marriage Casualty during the immediate Superior's Lifetime. But would not this supplendo vicem of a Superior carry a more ancient Superior. Such as Ward Lands Ward or Feu cum maritagio if the King getting the same changes to Feu of whom they hold their Lands Ward in the same Manner as they had entirely held Ward of the King as formerly. But if they alienate the Lands wherein the Superiority is so changed the other Ward Superiors of the Alienors and their Heirs will have Right to the Casualty of their Marriage, as if they had never obtained any such Exemption. Act 58. Sess. 1. Par. 1. K. 2. ~~[illegible]~~ I do not find it yet determined certainly at what Time the Vassal's Estate is to be considered, in Order to tax the Avail of his Marriage. In my Lord Stair's Opinion (Inst. B. 2. tit. 5. §. 55. Vers. But this Question) the general Rule of Estimate should be the Time of the Vassal's Marriage, or of his being required to marry in the current Year before Determination of the Ward, viz. the Twentieth in Men and Thirteenth in Women: Because then the Vassal gets a Tocher or is supposed fraudulently to decline getting of it. Nor can the Superior sustain any Loss by not determining the Avail at the marriageable Age of the Heir which is 14 in Males and 12 in Females, upon Supposition that the Heir may turn poorer at the Time of the Marriage, than when he or she was marriageable: Seeing Law hinders Minors to do Deeds to their own Prejudice, and good Curators frequently increase the Minor's Estate. Yet the Avail of a Vassal's Marriage was modified according to the free Estate he had the Time of his Predecessor's Death without Consideration of the Tocher he got thereafter 6 January 1603 L. Dun contra Ye Archbishop of.

The

It was once indeed found that

The Superior ought to have an Avail of Marriage for each of several apparent Heirs Marriageable and uncentered during the Ward. 15 July 1622 French and L. Thirdrhes contra Cranston. [illegible]

But that Decision finding an Avail due for every apparent Heir attaining to the marriageable Age, the happening to be unmarried during the Ward of several of the Vassal, as many Marriages shall fall to the Superior of the Vassal, as many apparent Heirs so singular successors to a Vassal. So may for ever many ing never so oft be liable but for one Avail, even tho he died several Ward Vassal of the same or different Superiors. Stair Inst. B. 2. tit. 5. §. 41. It were unreasonable to burden the Heir with Avails for all the Years that the unmarried during the Ward would have passed and John Campbell of Glenlyon and Sir James [illegible] but [illegible] Ward. See Stair Inst. B. 2. tit. 5. §. 54. It is objected that a Vassal not marrying if a Superior required him to marry, but if a Major unmarried succeeding as apparent Heir continue in that State for 1 year after his Predecessor's death the Superior may be charged with the single Avail that the Superior be not required to marry because their Heir then presumed deceitfully to wrong the Superiors. But if the Heir the Year do refuse a suitable Match proposed by the Superiors he may be effected with a double Avail. For it can never be reasonable to grant a restrictive Power to Vassals not to marry till they attain Vigour and Capacity to manage a Family, that is till the Men be 20 and the Women 12 Years of Age. Because there being a certain Rule to determine the Avail of Marriage, and it being de facto that preferable to other Heirs of the deceased Vassal or his Heir the Superior who can have no Benefit by the Marriage till the Heir of the Ward hath all Reason to maximate the Vassal's Marriage. Stair Inst. B. 2. tit. 5. §. 55. But at the same Time it is clear that the Superior ought to have an Avail for each of several apparent Heirs marrying and dying unentered during the Ward: Seeing all of them get Tochers or it was their own Fault that they did not. Stair Inst. B. 2. tit. 5. §. 54. For all which Avails the next apparent Heir may be pursued without pursuing any passive Title against him as representing the apparent Heir's Deceased: If the Pursuer must not against the Defender personally: Because Action for the Avail of Marriage is not personal, but declaratory and real for affecting the Ground 19 Novemb. 1635 Dickson of Headrig contra Donatary. Nay tho' an apparent Heir of Ward Lands renounce to be Heir his Marriage will fall, this Casualty being real affecting singular Successors. Stewart Inst. Tit. Ward Lands.

The Casualty of Marriage doth certainly fall by the Death of an Appriser or

Adjudger