

No Judger infest happening after the Legal is expired when the Debtors Right becomes totally extinct: And where there are several Apprisers or Judges of the Parcels of the Ward Lands, each of their Heirs are liable to the Casualty, Sir J. H. 5. But the Lord Stair (Hid.) and Sir James Stewart (Hid. Fil. Comprising) see in a be of Opinion, that no Casualty of Marriage is due by the Death of Apprisers or Judges infest within the Legal, vid. supra pag. 614. And yet the Casualty of Marriage was found due by the Death of an Appriser within the Legal; his Apprising not being then extinct and his Heir being marriageable. Albeit it was pleaded 1. That an Apprising which is pignus pretorium a collateral Security during the Legal doth not divest the Debtor who notwithstanding still remains Vassal; and if the Sums appraised for were satisfied by the Apprisers Intromissions within the Legal need not to be infest in the Lands de novo. 2. It were most incongruous to have the Casualty fall by the Apprisers Death. Seeing at that Rate not only a Ward Vassal might cause apprise his Land for an inconsiderable Sum and thereby free himself of the Marriage; but also there might be as many Marriages as there are Apprisers or Judges within Year and Day. In Answer it was answered, The Marriage should fall by the Death of the Appriser because 1. He was Vassal and could have the Superior to order him, and exclude him from claiming the Casualty by the Death of the Debtor, who hath no more than the Right of Reversion but his Apprising is satisfied. For tho' after Satisfaction of the Sums appraised for the Debtor's Interest revives; yet still then he is not Vassal, but the Appriser who in the Intimation can be all Deed as Proprietor, and therefore should be liable as such to all Casualties. So that the an Apprising ratum pignus pretorium, it is truly an Alienation and properly a judicial Sale under Reversion. The inconveniences arise from apprising for a small Sum or from the Multitude of Marriages in the Legal, which by long term coming in partibus, are of no Weight, since the Nature of the Legal will be receiving a small Apprising; tho' the Appriser did not what ordinary apprising would be profitable Casualties to him than the Debtor. Again the Heir of the Debtor still his Land and divided it among his Creditors in which case all their Marriages would have fallen after their several Impresments. And such Inconveniences might be shunn'd by the Creditors apprising their Sums to one Judge for all. 20 July 1680 R's Advocate contra Yeoman But such a Casualty of Marriage satisfied by Intromission in his Lifetime, tho' it was not then declared extinct; seeing thereby the former Vassal's Right revived, without Necessity of new Intromission. R's Advocate and Purves contra Lawes. The Marriage of a Ward Settler of Ward Lands dying before Redemption, will fall. But it will lease the Ward, because the Wardsettler debuit malum sibi providere. Stewart Hid. Fil. Ward. Sir James Stewart (Hid. Fil. Marriage) thinks, that an apparent Heir would fall if he be a Widower at his Father's Death. Tho' there appears great Reason for lessening and even excluding the Swail in such a Case, where the apparent Heir hath Children and Heirs.

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No Marriage Casually is due 1. If the Vassal's Heir was married in his Predecessor's Lifetime. Because he being married already hath no Heir to expect, and what is got before the Predecessor's Death is ordinarily applied to his Use. Craig Feud. Lib. 2. Tit. 2. §. 3. Stair Hid. §. 59. 2. The Superior can claim no suit Casually even from the Heir marrying after his Predecessor's Death, if the Marriage is done within Year and Day by the Death of the other Party without a Title of the Marriage. Because then the Heir gets Nothing by the Marriage. Sir J. H. 5. 55. 3. No marriage Casually is payable by an Heir who never marries. If he is naturally impotent and incapable to do conjugal Duty. Sir J. H. 5. 55. 4. A Superior by entering the Vassal's Heir is not understood to pass from his Casualty of Marriage, tho' he do not protest at the Time for leaving the Casualty. Craig Feud. §. 9. Ver. So and in Fraud. But Sir James Stewart Hid. Fil. Marriage distinguishes this. A Superior by infesting his Vassal's Heir before his Marriage is not liable with the Casualty, unless apprising is received. But the Superior's Intimation after the Casualty is fallen due, cannot be construed a pignus from it; but rather to be some Title better to enable him to pay it. The Heir's Contract is not to be construed evasive in either Part. Therefore the Vassal's Heir is liable to the Casualty of Marriage if he marry in his Predecessor's Lifetime before he is marriageable, tho' he is 14 Years in Males and 12 in Females. Sir J. H. 5. 55. 5. Precipitation when his Predecessor is married is without a previous protest or prohibition of Bars, having no other plausible Reason or pretence Necessity, yet so done than to disappoint the Superior and his Heir. L. Explic. contra R's Reversale contra L. Ghil. Albeit the Casualty of Marriage can be claimed upon Overture of Fraud, where the dying Predecessor has resigned the Feud in the Heir of his apparent Heir, or suffered his Land to be appraised or adjudged in Name of the Heir of the apparent Heir, to prevent such a Casualty's falling to the Superior; because the Superior consents to a Resignation, and Law obliges him to receive an Appriser. Craig Feud. §. 3.

The Casualties of single and double Swail of Marriage not being admitted, unless where the Marriage is taxed must be declared. A petitory Action for pointing the ground used to be cast in the same Libel with the Declarator; but it were more regular to carry on these Actions together in distinct Libels. Sir J. H. 5. 5. 2. & 4. The Tenor of an ordinary Declarator of the Swail of Marriage runs thus. Our Will is and we charge you, that ye lawfullis Simon B. as Adornor of the Lands of D. of C. at least as Heir apparent in the said Lands holden Ward or Feud cum Maritagio, to compare &c. to answer at the Instance of B. his Donatory by Virtue of his Gift of the Swail of the Marriage of the nearest lawful Heir of the last deceased Vassal, which Gift is dated &c. That is to say, the said Defender to hear and see it found and declared, that the Swail of a Marriage is due out of the said Lands to the said Superior or his Donatory by Modification of the Lords of our Council and Session according to the Condition of the State of the Heir or apparent Heir: And the said Defender is apparent Heir of the said Estate; and that he is of Age marriageable being past 14 Years complete; and that the said Lands ought to be pointed for the Swail of