

MARRIAGE,

1579

1569. February 2. WOOD *against* HEIRS of KINNOCHER.

ANENT the action pursued by Roger Wood against one of the Heirs-female of Kinnocher, for the avail of her marriage, as he that had right thereto, it was *alleged* by the said Roger, That he had required the said defender lawfully to marry an agreeable party of long time bygone, which the said pursuer had not obeyed, wherefore he called her for the avail of her marriage. It was *alleged* by the defender, That albeit she had not obeyed the requisition in time bygone, yet, notwithstanding, she is content to take the same in marriage that she was first required to take ; which allegiance of the defender was found relevant, and a day assigned to the parties for completing the said marriage ; which being done, assoilzied the said defender from the value of her marriage.

Fol. Dic. v. 1. p. 568. Maitland, MS. p. 192.

No 6.

An heir-female having refused to accept a match offered to her, was allowed to accept at the Bar when pursued for the avail.

1579. March 14. TULLIBARDINE *against* DRUMMOND.

THE young Laird of Tullibardine having obtained the ward and marriage of one Drummond, called him for the single avail of the said marriage, by reason he being lawfully required to marry a gentlewoman, equal in degree in all things to him, he refused the same. He *answered*, he was now ready to marry the said gentlewoman, and albeit he refused her, because he never saw her, nor knew her, *et quod opus est deliberatione in ducenda uxore*, and the time was not longer given but two or three months. To this was *answered*, that sinsyne she was contracted with another, and because of his refusal, the LORDS repelled the allegiance of the defender, and decerned him to pay the avail of the marriage, because of the refusal.

Fol. Dic. v. 1. p. 568. Colvil MS p. 281.

No 7.

Found in conformity with ——— ^{a-} against Crich-ton, No 5. p. 3518.

1589. January. ———. *against* Wood.

THERE was one called Wood, Laird of ———, that was pursued for the double and single avail of his marriage, because the donatar, and he that had the gift of marriage, had offered to him an equal and sufficient party. It was *answered*, that the offer was not sufficient, because the woman and party that was offered was crooked, *et orbato altero oculo*, and so by reason of the deformities of her person, the defender did no wrong in the refusing of her, and no penalty of the double avail of the marriage might strike upon him. THE LORDS found the exception relevant.

Fol. Dic. v. 1. p. 569. Colvil, MS. p. 447,

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No 8.