

MARRIAGE, AVAIL OF.

A. against B.

FOUND, that the heir may purge his refuse of the offer made to him, by accepting the match when he is pursued for the simple avail.

(The contrary of this practick has been found, *sed intellege*, if they be both free persons.)

Fol. Dic. v. 1. p. 569. Kerse, MS. fol. 113.

No 1.

A. against B.

FOUND, that a gift of marriage intimate to the father as administrator to his son, was sufficient, albeit the same was never intimate to the son himself, and he married after his decease.

Kerse, MS. fol. 114.

No 2.

1488. *March 7.*

The KING *against* WILLIAM CAIRNS, Nephew and Heir to umquhile John Cairns.

GIF ony man haldan land be service of ward and relief of his superior, happen to contract or marie his sone and air on his death-bed, intending thairby to defraud the superiour of the proffeit of his air's mariage, and he happen to deceis of the samen seiknes, being vest and saisit in the lands; his air, efter his deceis, sall nevertheless content and pay to the said superiour the single avail allanerlie of his mariage; because his predecessour held his lands be service of ward and relief, as said is, and deceis saisit in the samen, and thairfoir the proffeit of his air's mariage wald have pertentit to his superior throw his deceis, gif he had not fraudfullie contractit the samen upon his death-bed.

Fol. Dic. v. 1. p. 570. Balfour, (MARRIAGE OF HEIRS.) No 15. p. 247.

No 3.
The heir having married while his predecessor was on death-bed, this was considered to be a fraudulent attempt to disappoint the superior, and the avail was found due.