

No 24.

The superior has right to the avail of the marriage of every apparent heir, however many may die before entering, or before majority.

1622. July 11.

FRENCHLAND *against* The HEIRS of THORNYDYKES.

IN the action betwixt Frenchland and the Heirs of Thornydykes, the LORDS found, that, albeit the King had given the gift of Adam French his marriage, as apparent heir of Robert French of Thornydykes, his father, and that Sir John Home of North Berwick, donatar, had obtained decret of the single avail of the said Adam's marriage, *tanquam onus reale* of the ward-land, and that the land was ordained to be poided therefor; which decret was obtained against the sisters of the said umquhile Adam, who were daughters and apparent heirs of their father, Robert, that the King's second donatar had also good right to marriage of the said daughters, as apparent heirs to their father, Robert, by decease of their brother, Adam, notwithstanding that Robert's marriage was gifted and declared; and thereby found, in effect, that, if the King's vassal of ward-land died, and left an heir minor, unmarried, his marriage should vaick, and that the laird might be paid for it, after decret; and he marrying before his perfect age, and entry to his land, if his apparent heir were minor, his marriage should fall of new; and, being decerned, the land might be poided for it, *et sic in infinitum*.

Fol. Dic. v. 1. p. 568. Haddington, MS. No. 2645.

* * * The preceding case by Durie contains likewise the matter of the above.

No 25.

1622. July 25.

FRENCHLAND *against* HEIRS of THORNYDYKES.

IN a pursuit by Frenchland against the Heirs of Thornydykes, for the avail of their marriage, albeit the rent of the land was proved to be 2500 merks, or thereby, yet the LORDS ordained only L. 1000 to be paid, in respect of the rigorous decision whereupon the litiscontestation was grounded.

Fol. Dic. v. 1. p. 570. Haddington, MS. No. 2663.

No 26.

1627. March 8.

E. ROTHES *against* BALFOUR.

A requisition was sustained, which bore, that the defender was desired to come and treat with the party offered.

IN a pursuit at the Earl of Rothes's instance against Balfour, for the avail of his marriage, single and double, the LORDS found, that, albeit the premonition made to the vassal, to come and treat, and to marry, bore not that the procuratory was then shown to the vassal; yet that the same was sufficient, and sustained the same, both for the single and double avail; for nothing was then shown to declare, that the defender doubted of the procuratory, or desired then to see it. *Item*, They sustained requisition, bearing, that the defender was desired to come and treat with the party offered, albeit it bore no special day, against, or at the which he was required to come and treat, seeing