

THE LORDS, considering the favourableness of the case upon the pursuer's part, modified the avail of the marriage to 8,500 merks.

No 34.

*Fol. Dic. v. 1. p. 570. Stair, v. 2. p. 188.*

1674. December 12.

MOUBRAY against ARBUTHNOT.

No 35.

IN a process for the single avail of a marriage, the LORDS modified 9000 merks, the rent of the lands being proven to be 3000 merks; and it was thought that the avail of the marriage should be in all cases of that nature, three years rent.

*Fol. Dic. v. 1. p. 570. Dirleton, No 202. p. 90.*

1675. February 24. KING'S ADVOCATE contra the LAIRD of Innernytie.

No 36.

THE King's Advocate having pursued for the avail of the marriage of the Laird of Innernytie, he *alleged absolutor*, because he held a part of his estate taxed ward of the King, in which his marriage was taxed to L. 1000, which he had paid to the Sheriff of the shire, which was counted for, and allowed in Exchequer. It was *answered*, That the allegiance is not relevant, for if the defender had twenty several taxed wards, he would be liable for the taxed avail of his marriage for each of them, and having a simple ward, he is liable for a marriage according to the full avail.

Marriage found due to the King as superior, where the vassal held simple ward, altho' he had lands also taxed ward.

THE LORDS found the defender liable for the full avail of a marriage, abating the L. 1000 for his taxed marriage, as a part of the full avail; and having considered the defender's oath, expressing his rental, deductions thereof, sums due to him, and by him, and his moveables, amongst which deductions, his mother's liferent was estimated, as it was worth in buying and selling, according to her age; and the pursuer's insisting for the single avail, and desiring a reservation to insist for what further should be found due for a double avail, upon the offer and refusal of a suitable match, the LORDS moved to the donatar and defender, that they should modify in consideration of the whole; which being agreed to, the LORDS modified for all three year's rent of his estate and money, *deductis deducendis* as aforesaid.

*Fol. Dic. v. 1. p. 570. Stair, v. 2. p. 328.*

1677. January 3. CAMPBELL against M'NAUGHTAN.

No 37.

ARCHIBALD CAMPBELL, as donatar by the Earl of Argyle, pursues M'Naughtan for the single avail of his marriage, who *alleged absolutor*, because he married in the time that the Usurper, by act and proclamation, took away

Single avail found due ex contractu feudali, and