

least apparent, held the lands and barony of Lundie ward of the King, and this Lundie was unmarried at the time of his father's decease, at the least he was married, within ten or twelve hours, immediately before his father's decease, after that he had contracted his deadly sickness, and after his speech was laid, the said marriage being precipitate, but proclamation of bands of a preaching day, against the common law, practice of the realm, and constitutions of the kirk, and done precipitately, unlawfully and clandestinely, manifestly to defraud the King of his right of the marriage, whereby he had taken from the King all occasion to make him a lawful offer of a party agreeable, and from himself all possibility to accept of a lawful offer of any party; and therefore seeing his fraud should neither profit him nor hurt any other, therefore he should be decerned to pay the single avail of his marriage, extending to L. 10,000, and the double avail thereof, extending to L. 20,000. The parties compearing, and their allegations heard and considered, the LORDS found the summons relevant, repelled the whole exceptions, and admitted the summons to probation. It was affirmed by some of the Lords, that the like was decided betwixt the Treasurer and the Laird of St Monans, and betwixt the Treasurer and the Laird of Badinraith; and the said practices were extracted by my Lord Elphinston, and in the hands of James Fogo his servant, to have been produced in the action intended against the Laird of Rossie for the like cause. This litiscontestation was made in Lundie's cause.

*Fol. Dic. v. 1. p. 570. Haddington, MS. No 1059.*

1610. *January 27.* KELBURNE *against* FAIRLIE.

IN the action pursued by Kelburne against the heirs of Fairlie, it being *alleged*, that one of them being little more than twelve years of age, and so not able to enter to her lands, which would pertain to the King and his donatar, until she were fourteen years of age, she could not be compelled to pay the avail of her marriage, she being unhabile to do the same, wanting the infestment, possession, and profit, until that age; and where, as I proponed that that was more proper by way of suspension than by exception, and that if that were admitted in women till they were fourteen years, it would be relevant in men till they were twenty-one years, which was an extraordinary prejudice to the King, and all superiors of ward lands; especially seeing the vassal having other goods, or blench, or feu lands, his marriage was restricted according to the avail of his hail rental; notwithstanding whereof, my Lord Chancellor altered not the former interlocutor, bur rather blamed me for insisting to the contrary.

*Fol. Dic. v. 1. p. 568. Haddington, MS. No 1763.*

No 11.

No 12.

No execution can pass for the double avail, so long as the heir female is unmarried, she finding caution to pay if she marry.

Women minors are not liable for the avails of their marriages till they are 14 years old.