

1681. *January 20.* PATERSON *against* TWEEDIES.

CAPTAIN PATERSON, as donatar to the ward and marriage of Tweedies of Whithaugh, pursues for the avail of the marriage.—The defenders *alleged* absolvitor, because their father, the King's last vassal, died in his Majesty's service at Philiphaugh, under the command of Montrose; and there are several statutes, declaring, That where the King's vassals dies in a battle, in his service, the vassal shall be free of the ward of the marriage.

THE LORDS repelled the defence, and found these statutes only temporary, but resolved to be the more favourable in the modification.

*Stair, v. 2. p. 839.*

No 42.

A marriage found due, though the vassal died in the King's service.

1701. *November 7.* JAMES BAIRD *against* MORISON of Pitfour.

JAMES BAIRD, writer to the signet, pursues Morison of Pitfour, as apparent heir to his brother, for declaring the ward, non-entry, and marriage of his lands, whereunto he was constituted donatar by a gift from his Majesty. The defender being past minority at his brother's death, there was no ward due; and for the non-entry, the LORDS found, before citation in this declarator, the retoured duty was only what the donatar could claim; but decerned for the full mails and duties from the citation to the time of his being entered in the ward-feu; and found the vassal last infest died in September 1689, and the citation in this process was not till June 1699, so the retoured mails were due only preceding that citation; and for the casualty of the marriage, modified two full years of the free rent of the lands; but refused to have any consideration of the tocher received by the last vassal, as a part of his estate, in valuing the apparent heir's marriage, because it was liferented by the relict, and so omitted in the valuation, these consequences of superiorities being unfavourable.

*Fol. Dic. v. 1. p. 570. Fountainball, v. 2. p. 123.*

No 43.

In a declarator of the casualty of marriage, the Lords modified two full years' rent, and had no consideration of the tocher received by the vassal as part of the estate, in valuing the apparent heir's marriage, because it was liferented by the relict.

See APPENDIX.