

No. 18. 1740. *December 23.* LUNDIN of DRUM *against* LAW of Pittillock.

THE husband and his heirs whatsoever, as well as the heirs of the marriage, can quarrel deeds elicited from him *contra fidem tabularum*.

No. 19. 1742. *February 3.* ROBERTSON *against* MRS JEAN KERR.

MAJOR ROBERTSON by contract of marriage became bound to provide 30,000 merks and conquest to himself and his wife in conjunct-fee and liferent, and children of the marriage, whom failing, his heirs and assignees in fee; and by his testament, (his estate being still moveable,) bequeathed the whole to his son and only child; and failing him, he substituted his wife, with the burden of certain considerable legacies in case of his son's death before majority; so that it seemed to be his intention, that the son should not have power to alter during minority. The son died during minority, and the relict thereon succeeded to the whole executry. The Major's brother served heir of provision to the Major in the contract, and claimed implemented of the 30,000 merks;—but the Lords found that he had no claim on the contract, for they thought that such a substitution of money provisions in a contract failing issue of the marriage, to the man's heirs and assignees, which is common in merchant's contracts, is not intended to make the man's whole stocking heritable; nor *2dly*, to hinder him, failing issue, from the power of testing; and *3dly*, that it was sufficiently implemented notwithstanding the substitution unalterable in minority, and that the son could not himself have quarrelled it; and if there had been no substitution, the Major's executry would not have been heritable or gone to the pursuer as heir. *Vide inter eosdem voce* LEGITIM,—TESTAMENT,—WRIT.

No. 20. 1743. *June 4.* HEIRS of STEWART of Phisgil, *Competing*.

THE wife's estate being disposed to the husband, and both it and the husband's conquest provided to the heirs of the marriage, the eldest son died leaving a daughter; and the father (the party contractor) tailzied his estate to the heirs-male of the marriage, which failing, the heirs-female, which failing, his collateral heirs-male, excluding his son's daughter. It