

1740. *December 23.* LUNDIN of DRUM *against* LAW of Pittillock.

No. 18.

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

1742. *February 3.* ROBERTSON *against* MRS JEAN KERR.

No. 19.

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.

1743. *June 4.* HEIRS of STEWART of Phisgil, *Competing*.

No. 20.

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

was found that he could not prefer his daughters and their issue (which the defender was) to his son's daughter the pursuer, and therefore reduced the tailzie. Adhered, and found the entail *in fraudem tabularum*.—The decree afterwards affirmed in Parliament. *Vide inter eosdem voce FRAUD.* No. 20.

1744. *January 31.*

MISS MURRAY, and CREDITORS of MR HUGH MURRAY of Kinnimond,
Competing.

No. 21.

A CONTRACT of marriage providing in different events the whole or half of household plenishing to the wife, with a faculty of redemption in the different events to the children of the marriage, limited to a short time, the faculty was found to accresce to the husband's creditors, and that they could take the benefit of it even in exclusion of the child of the marriage, 3d January 1744. And by the same contract certain large sums being provided to the daughter or daughters of the marriage in case there were no sons; and by another clause the man's whole estate being settled by way of succession failing heirs-male of his body, upon the heirs-female or daughters of this marriage, so that it seemed probable that these money provisions were intended only for the event of his having only daughters of this marriage; but having sons of another marriage, and in fact the marriage dissolved by his death, the only daughter of this marriage was also heir of provision of his whole estate, whereof the greatest part was under a strict entail not liable to his debts;—yet because the words of the clause were general, “in case of no sons of this marriage,” the only daughter was found entitled to the money provision, and to compete with the other onerous creditors. *Vide inter eosdem voce EXECUTOR, voce JUS QUÆSITUM, & voce FRAUD.*

1744. *December 11.*

CREDITORS of HUGH MURRAY *against* GRAHAM of Balgowan.

No. 22.

A FATHER being debtor by bond for his daughter's tocher, may, after dissolution of the marriage by his son-in-law's death, retain it till his daughter be satisfied of her provision of household furniture in her contract of marriage, but may not retain it for her aliment to the term after her husband's death. *Vide inter eosdem voce LOCUS PÆNITENTIÆ.*