

No 47.

THE COURT were clear, that the disposition did not include the documents of debt or money; 14th May 1795, Earl of Fife against M'Kenzie and Fraser, *infra, b. t.*; and so far the petition was refused without answers.

But it was thought the pursuers were entitled to the watch and trinkets; and the petition, as to this point, was, of consent of the defenders, remitted to the Lord Ordinary.

Lord Ordinary, *Methuen.*For the Petitioners, *Solicitor-General Blair, Hagart, Connell.*Alt. *H. Erskine, D. Douglas.*Clerk, *Sinclair.**D. Douglas.**Fac. Col. No 29. p. 68.*


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S E C T. VI.

Right of Electing, with Advice and Consent.—Discharge of all Claims against a Predecessor's Estate.—The term *Heirs Female*.—Provision to Children in full of all Claims.—The term *Children* in a Testament.

1739. *December 4.*MAGISTRATES OF LINLITHGOW, *against* The KIRK SESSION thereof.

No 48.

A right to elect to an office, with the *advice* and *consent* of another, was found to imply a negative; and that an election without the consent, was ineffectual.

THE right of election of the precentor of Linlithgow, by an old deed between the kirk session and the town, being in the kirk session, with *advice* and *consent* of the magistrates and town council, the question was as to the import of giving advice and consent, whether, in case of their dissenting, the kirk session had power to judge in the first instance of the cause of their dissent, leaving to the magistrates to seek redress by suspension or reduction? or if thereby the magistrates had in effect a negative, so that in case of their refusing their consent, there is no election?

THE LORDS were of opinion, That the magistrates had a discretionary power to consent to, or to dissent from, the election, as they should see cause; and that, without their consent, there could be no election: And therefore 'suspended the election of the precentor made contrary to the opinion of the magistrates; reserving to the kirk session to sue for redress as accords.'

*Fol. Dic. v. 3. p. 123. Kilkerran, (ADVICE and CONSENT.) No 1. p. 20.*

No 49.

A son having granted a discharge of all claims

1744. *December 15.* IRVINE *against* IRVINES.

PATRICK IRVINE, eldest son of Patrick Irvine, merchant in Prestonpans, in his contract of marriage, in consideration of the settlements by his father therein