

charge of the warrandice *hereditatem subesse*, and that he the disponer was the heir.

No 46.

The following judgment was pronounced :

' THE LORDS find the letters orderly proceeded to the extent of the L. 20 Sterling, the sum paid by Watt to James Robb, at granting the disposition 1740.'—See WARRANDICE.

Act. Geo. Buchan-Hepburn.

Alt. Pat. Murray, M^cQueen.

Clerk, Campbell.

Fac. Col. No 204. p. 147.

1797. May 30.

JEAN M'NAB and Others, against MRS ELIZABETH SPITTAL, and her HUSBAND, for his Interest.

CAPTAIN SPITTAL disposed the house in which he resided, with the offices, and a small inclosure, to Jean M'Nab in liferent, and his natural son by her in fee. The disposition also conveyed to them ' the whole plenishing and household furniture of every denomination, and every other article of all sorts and descriptions whatsoever, presently belonging to me, and contained in the subjects hereby disposed, and particularly in my dwelling-house, and office-houses in the said subjects, or which may be therein contained at the time of my decease, dispensing with the generality hereof, and declaring these presents to be as valid and effectual as if every article herein conveyed were particularly enumerated.'

No 47.
A clause conveying a house, and all that it contained, found not to include documents of debt or money.

At his death, Mrs Elizabeth Spittal, his only lawful child, succeeded to the family estate, and her agent took possession of some documents of debt, bank-notes, money in gold and silver, and some trinkets, which lay in a cabinet, in the house conveyed by the disposition, and likewise of a gold watch, found in the house.

Jean M'Nab, and the Tutors of her son, brought an action for repetition of them.

THE LORD ORDINARY found, ' That the settlement libelled does not extend to; nor can be constructed to comprehend, any of the articles in the defender's possession.'

In a petition, the pursuers contended, ' That the clause was sufficiently broad to support their claim; *L. 21. l. 49. ff. de verb. sign. ; Vinnius, l. 2. t. 2. § 1. ; Harcarse, voce LEGACY, No 663., and Fountainhall, v. 1. p. 244. 22d. November 1683, Oswald against Mortimer, voce GENERAL ASSIGNATION ; Dalr. p. 23. 1st December 1699, Henderson against Beer, IBIDEM ; that this was a question of intention, and that Captain Spittal meant to leave the disponees wherewith to live comfortably in the subjects disposed to them, his heir at law being sufficiently provided aliunde.*

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.*

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