

for the which he had found the foresaid caution ; for, the cautioner being only generally bound that the factor should discharge an honest and faithful duty, could not be specially pursued till sentence were recovered against the factor, constituting him special debtor to the pursuer. Which was so found by the Lords ; albeit the pursuer replied, that he had in effect discussed the said factor, in respect he produced two of his own missive letters, written to the pursuer, wherein he confessed that he had received so many wares from him as extended to the prices now claimed by the pursuer ; likeas he confessed, in the same letters, that he was not then able to give him satisfaction. Which reply was not sustained.

*Act.* Burnet, *major.* *Alt.* ————. *Scot, Clerk.* *Vid.* 10th December 1623, what is noted there.

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1626. *July 12.* The EARL of DUMFERMLING *against* LADY DUMFERMLING.

IN an action of extension of a minute betwixt the Earl of Dumfermling and his mother, pursued at the instance of the Earl, and the Earl of Wintoun his tutor, against the lady,—the Lords found, that neither this minute could be extended nor should produce any other action thereupon, because the same was only set down by way of advice and counsel, and contained only the opinion of certain friends, whose opinions were sought by the said parties in certain particular questions anent matters controverted betwixt the said parties ; which resolution and advice, so set down in the foresaid minute, was found not to be obligatory to bind the parties to their advice, and to the abiding and standing at the same ; and so that it could not produce action against the party who should oppone against the same : And this was found, albeit the inscription bore these words, *viz. Questions to be resolved by the three friends therein named, viz. the Chancellor, the Earls of Melrose and Lauderdale, with the which both the said parties were content ;* likeas the said minute, containing the said questions, was at the end thereof subscribed by both the said parties :—in respect of the which inscription, bearing, as said is, *That the parties were content,* and, in respect of their subscription of the minute, the pursuer replied, that the defender could not be heard to allege that the minute was not obligatory, and that it was but a naked advice, which could not bind by the law. Which reply was not respected, and the minute found not to be obligatory, because it was set down by way of advice, as said is.

*Act.* Hope and Nicolson. *Alt.* Stuart and Aiton. *Gibson, Clerk.*

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1626. *July 14.* The LAIRD of GRANGE *against* BETSON of CARDEN.

IN a contravention, pursued by the Laird of Grange *against* Betson of Carden,—the Lords were of the mind, albeit this was not then in specific terms found, (because that point was not controverted,) that neither pasturage *in confinio,*