

1673. *July.*

## ANENT OBLIGATIONS.

IT was questioned between two parties, Where there is an obligation *specificce* conceived to deliver a bond or other paper, if the party obliged will be liberated by offering a decreet proving the tenor of that paper; and if such pactions can be fulfilled *per æquipollens*, where the specific performance is imprestable, as here by the loss of the paper; and if the said tenor proven is a full and equivalent implement.

The Lords doubted much to receive it. Yet, *argumento* of the 37th act in the Parliament 1555, we may rationally think this is a maxim of our law, *contractus qui non potest impleri in forma specifica, potest suppleri per æquipollens*: and that very act refers us to the common law, which holds the same, *arg. l. 3, C. de Institutionibus et substit.* See also 18th February 1609, *Abercorne*.

*Advocates' MS. No. 410, folio 222.*

1673. *July.*

## ANENT ARRESTMENTS.

IT was questioned amongst the Advocates, how money could be arrested in a minor's or pupil's hands, especially if he wanted tutors or curators; and when he had them, in whose hands the same was to be laid on. Sir George Lockhart thought, if he was a pupil, it behoved to be in the tutor's hands allenary, especially where he was *intra infantiam, id est septennium, per l. 18, C. de Jure deliberandi*; because tutors act and administrate as principals, *et gerunt personam pupilli*, whereas, after pupilarity, the minor becomes principal, and the curators only consent; and therefore, after fourteen, it behoved to be in the minor's hands: but in both cases, in the pursuit to make forthcoming, the tutors and curators ought to be called: yet that the curators might be cited by a general citation at the market-cross where the minor resides; but where he wanted tutors or curators, then the bill of arrestment behoved not to pass in the ordinary form, but upon special knowledge of the Lords, that they may either authorise him or dispense with the same.

It was also doubted, how we could arrest in the hands of him who was out of the country; and if he had factors or commissioners established, if it would be legal enough to arrest in their hands. But I think it safest that the bill pass upon special notice of the Lords, and bear that the party is out of the country; and the Lords will grant letters of supplement for doing of the same. *Vide supra, No. 310, 24th January 1672.*

*Advocates' MS. No. 411, folio 222.*

1673. *July.*JAMES GIBSONE *against* the HIGH CONSTABLE.

ONE James Gibsone, a baxter in Plaisance, having been fined for a pretended riot in eightscore pounds in the Constable Court, during the sitting of the Parlia-