No 2. not lethal if they live 40 days, as *Zachias, in quæst. medico-legal*, says. And the President minded Thomas Fleming's case, who bought a woman's liferent, and she died within a week; and that law gives only six months for redhibition. The Lords adhered to their former interlocutor.

Upon this, Hugh Kennedy having extracted his decreet for penalty and all, they gave in a bill, complaining, that he had extracted it for the penalty, whereas they had a most probable cause to suspend.——The Lords, on the 27th of July, recalled the decreet, and assoilzied from the penalty; which, though materially just, yet was against form, the decreet being extracted, and so should have been done by way of suspension.

Fountainhall, v. 1. p. 462.

1696. *June 5.* James Wood *against* Hary Baird.

No 3.
Money offered at the current rate, after *private* knowledge of an act of Parliament lessening its value, found to be fraudulent.

Wood being debtor to Baird in a sum, and hearing that on the 2d of June current, the Privy Council had by an act cried down the 40 shilling pieces from 44, (at which they had passed before) to their old standard of 40 pence; he that same night went and offered payment of the whole sum to his creditor in 40 shilling pieces; and he refusing to take them at their former rate, he took instruments on his offer, and gave in a bill of suspension, *alleging* he ought to be ordained to take them at the rate of 44, in regard the act was not proclaimed at the market-cross, (which is the only thing that puts the lieges in *mala fide*,) till the next day after his offer, and before proclamation the act was not obligatory nor binding.——The Lords considered the design of promulgating these acts was to certiorate the lieges; so if they knew before that public intimation, *that* was sufficient to make his offer fraudulent; and so found the creditor was not bound to accept of his private knowledge and fraudulent design. Some urged his oath might be taken if he knew that the act was passed before his offer; but the Lords thought that needless, because his bill of suspension seemed to acknowledge as much.

Fol. Dic. v. 1. p. 332. Fountainhall, v. 1. p. 718.

1744. *December 19.* Wardrop *against* Fairholm and Arbuthnot.

No 4.
An assignation of a claim of damages, after arrestment of the same claim before it was liquidated, held to be fraudulent.

James Grierson and James Gairns merchants in Edinburgh, brought an action in the Court of Exchequer against John Macnaughton collector of the customs at the port of Anstruther, for an unlawful seizure made by him of some goods belonging to them, and obtained a decree for damages and costs of suit; which fund became the subject of a competition amongst their creditors.

Their cause came on in Candlemas term 1741-2, and the verdict and final determination was obtained in Whitsunday term 1743. No 4.

In August 1742 Fairholm and Arbuthnot arrested in the hands of Macnaughton; on June 14th 1743, Grierson and Gairns assigned their claim of damages, with all that might follow thereon to John Wardrop writer in Edinburgh, for the behoof of their creditors therein mentioned; and this was intimated on the 15th, and Alexander Arbuthnot and Company arrested on the 17th.

Mr Macnaughton raised a multiple-poinding, in which the Lord Ordinary 'preferred Fairholm and Arbuthnot *primo loco*, and Arbuthnot and Company *secundo loco*, both in the sum decreed for damages, and that for costs of suit.'

Pleaded, in a reclaiming bill for Mr Wardrop, The arrestments were laid on before the judgment in the Exchequer, by which only Mr Macnaughton became debtor, and before the costs were incurred, and consequently longer before they were taxed by the proper officer. Arrestments do not affect *acquirenda*; and here the damages were plainly a posterior acquisition by the decree of Exchequer, and which Grierson and Gairns could have given up at any time, by desisting from the action; and as the costs were not laid out at the time of the arrestments; so to insist for a preference on them, is a manifest injustice to the other creditors, since these costs were taken out of the debtor's other subjects not arrested, and which ought to have gone amongst his whole creditors. A parallel case occurred, Menzies against Graham, No 95. p. 770, where the Lords preferred an assignation, posterior to an arrestment, of a subject confirmed by the cedent after the arrestment.

Answered, That an arrestment is proper during a dependence; every subject of a debtor is affectable by diligence; and here arrestment was the only proper diligence; and it were odd that the same subject should be capable of being assigned, and not of being arrested. The decision cited does not apply; an executor till confirmation has no right; and therefore the assignee after confirmation, was justly preferred to the arrester before it.

2dly, The assignation was by a bankrupt *in fraudem creditorum;* he was under diligence by horning and caption at the instance of the respondents; and by the tenor of the assignation, all creditors that arrested, or did not pass from their arrestments, are excluded from any benefit thereof. It was found, that a bankrupt could not bring in all his creditors alike, in prejudice of other diligence, Snee and Company against the Trustees of Michael Anderson's Creditors, No 242. p. 1206; and Earl of Aberdeen against the Trustees of Blair, No 244. p. 1208.

'THE LORDS found the assignation reducible on the act of Parliament 1621, there being diligence by horning at the instance of Fairholm and Arbuthnot, and Arbuthnot and Company, prior to the granting the assignation; and therefore adhered.'

For the Assignee, *Cross*. For the Arresters, *Maitland*. Clerk, *Gibson*.

D. Falconer, *v.* 1. *p.* 30.

*** This case is reported by Clerk Home, No 125. p. 1025.