

No 2. not lethal if they live 40 days, as *Zachias, in quest. 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 decret 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 decret, and assoilzied from the penalty; which, though materially just, yet was against form, the decret being extracted, and so should have been done by way of suspension.

*Fountainball, 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. Fountainball, v. 1. p. 718.*

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

1744. December 19. WARDROP against FAIRHOLM and ARBUTHNOT.

JAMES GRIERSON and James Gaiens 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.