

far as he was but a small heritor ; and the act of Parliament imposeth the one hundred pound upon gentlemen transgressors. And as all heritors are not gentlemen ; so he denied that he had the least pretence to the title of a gentleman : And further, he had married the woman he offended with ; which lessened the scandal, and was a ground to mitigate the fine.

The Lords sustained the reason of suspension to restrict the fine to ten pounds Scots, because the suspender had not the face or air of a gentleman. Albeit it was alleged for the charger, That the suspender's profligateness and debauchery, the place of the country where he lives, and the company haunted by him, had influenced his mien.

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1709. Nov. 18. ALEXANDER GRANT *against* STRACHAN of Thorntoun.

IN the action at the instance of Alexander Grant against Thorntoun, The Lords, upon report of the Lord Cullen, found, That the defender in a summons of constitution, in order to adjudge and come in *pari passu* with a former adjudger, not compearing at the first calling in the outer-house, but compearing when the cause came in by course of the regulation-roll ; could not be allowed to see the process in common form, but only in the clerk's hands.

1709. Nov. 18. [ANENT the GRANTING of DILIGENCE.]

UPON the Lord Cullen's report, the Lords found, That a Lord might grant a second diligence to a person against whom the term had been circumduced by another Ordinary, whether in absence, or for not reporting the first diligence : Albeit *regulariter, par in parem non habet imperium.*

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1709. Dec. 8. Mr. WILLIAM HAMILTON, Merchant in London, and ARTHUR BROWN, Merchant in Edinburgh, *against* MARGARET TURNBUL, Sister to Captain James Turnbull.

IN an action, at the instance of William Hamilton and Arthur Brown, upon the passive titles against Margaret Turnbull ; for constituting, against her, debts due to the pursuers by the deceased Captain James Turnbull, in order to come in with former adjudgers ; there being no compearance for the defender when the summons was first called, she was only allowed, at the calling by the regulation roll, to see the process in the clerk's hands : as had been done 18th November last, in the case of Grant against the Laird of Thorntoun. And the Lords resolved to observe this rule in all time coming.

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