

pensation : because, had private persons embraced the privilege reserved to them in the Bank's agreement, and carried their own money to the mint, and waited the course of recoinage ; they must have got their certificates of loss instantly satisfied by the Commissioners of the Equivalent, without being questioned about the ex-crecence, or liable afterwards to quit it ; and the Bank, by undertaking the re-coinage, came in place of the private persons, who got their old money exchanged at the Bank.

The Lords found, That the benefit by the augmentation of the tale, is to accrue to the Bank, as well as to any other private proprietors of bullion ; and is not imputable *pro tanto* in payment of what is allowed in satisfaction of the loss sustained by the giving in, and giving out of the money.

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1709. *Feb. 24.* HARY DOW, writer in Edinburgh, *against* Mr. DAVID SEATON of Northbank.

HARY DOW, as curator to Cassie of Kirkhouse, having obtained a decret of count and reckoning, against Mr. David Seaton, late co-curator and factor ; as a person suspected, and debtor to the minor in a great balance : Mr. David procured a suspension of the decret, upon consigning a disposition of all his means and estate, for security of the foresaid balance ; during the dependence of which suspension he was discharged to meddle in the minor's affairs. After the Ordinary in the suspension had constituted the charge against the suspender, which was very considerable, and before his articles of discharge could be particularly discussed ; Hary Dow having represented to the Lords by bill, that Mr. Seaton's affairs were turned altogether in disorder ; that himself had absconded, and his creditors were going on with diligence against his estate :—

The Lords appointed the consigned disposition to be registered, and given up to Hary Dow, to take infeftment thereon, for securing to the minor what balance Mr. David Seaton should be found debtor in at the event of the count and reckoning. Albeit it was alleged for the suspender, that infeftment could not be taken for a debt not yet constituted.

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1709. *Nov. 9.* THOMAS SANDILANDS, Collector of the Fines imposed by the Justices of Peace in the District of Mid-Calder, *against* JOHN PURDIE of Hartburnhead.

JOHN PURDIE, fined by the said Justices of Peace in one hundred pound Scots, for fornication with Christian Howison, his servant, conform to the Act 38, Parliament 1661 ; he being the eldest son of an heritor, and so a gentleman in the construction of law : when charged for payment by Thomas Sandilands, collector of these fines, he suspended upon this ground, that the fine was exorbitant ; in so

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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