

No 272. jointure; and are frequently due, when the jointure takes no place by the husband's surviving his wife. But since the jointure here was provided in contemplation of a suitable tocher stipulated, tocher and jointure are *correlata, quæ mutuo se ponunt, et tollunt*, the latter cannot be claimed, unless the former be paid; and far less when the father, who should have paid it, did not sign the contract, and might resile, whereby there was also *locus penitentiæ* as to the jointure.

THE LORDS found, That the pursuer, as heir to her father, is under no obligation to pay the tocher, in respect her grandfather did not subscribe the contract, and there was no separate obligation for the tocher; but found, That albeit the contract is not null for not being subscribed by the bride's father, mentioned therein as a contractor for the tocher; yet the pursuer cannot insist against the defender for payment of the jointure, without paying the tocher, except in so far as the jointure exceeds the tocher. See LOCUS PENITENTIÆ.

Fol. Dic. v. I. p. 408. Forbes, p. 394.

DIVISION IX.

The wife's personal privileges.

BRUNTISLAND *against* COBB, OR BROWN *against* MONTEIR.

No 273. A HUSBAND has no action of spuilzie against his wife, but *rerum amotarum*; yet in case he make cession of certain goods and gear, intromitted with by her, the assignee has action of wrongous intromission *ipsorum corporum*, although it was objected that no person *plus juris in alium conferre potest quam in se habet*.

Fol. Dic. v. I. p. 408. Appendix to Pitmedden's copy of Colwill, p. 63.

BELL *against* Hog, &c.

No 274. IN an action of double poinding, pursued by John Bell of Bell's Mills, *contra* Janet Hog, relict of umquhile Walter Bell his father, on the one part, and the Ministers and Elders of St Cuthbert's kirk on the other part, anent the sum of 4000 merks, addebted to the said Janet Hog by the said John Bell, and whereof L. 400 was arrested by the session of the kirk, in the said John Bell's hands, for satisfaction of a penalty of L. 400 incurred by the said Janet Hog, *stante matrimonio*, betwixt her and her said uncle, his band, for the slanderous conversing with ane David Houison against the tenor of an act, whereby she in person, in presence of the Session, acted herself, (her husband consenting), to abstain from the said Houison's company, under