

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 penitentiae* 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 PENITENTIAE.

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

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## 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.*

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#### 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

the said pain; the LORDS, by interlocutor, sustained the act of the Session, and pecunial pain therein contained; and also it was found, that she should pay the said pain therein contained, of her own proper money, notwithstanding the act was made in her husband's time, the fault also committed *ipso vivo*; and found, that the said pain should noways be exacted of the said husband's executors, *quia noxa caput sequitur*. Kerse, MS. fol. 63.

No 274.

\* \* \* This and the preceding case have no date, but must have been prior to the one following.

1613. *June 16.*HEPBURN *against* NASMITH.

No 275.

IN an action pursued by Elizabeth Hepburn, relict of umquhile Thomas Henderson *contra* John Nasmith, to hear and see her reponed against the consent given to the alienation of her conjunct-fee lands, the LORDS granted absolvitor from the summons as they were libelled, because it was not qualified *relative* that she was compelled *justo metu*, and to remember that the reason of reduction bore a disposition made *stante matrimonio contra jus commune*, and the practice of the country. *Item*, that her husband was *homo ferox*, &c. *3tio*, A revocation. *Item* when we would have replied *super metu*, the LORDS refused.

Kerse, MS. fol. 64.

\* \* \* Haddington reports the same case :

A WOMAN having consented to an alienation made by her husband, of lands wherein she was infeft by her husband, before her marriage, in liferent or conjunct-fee, *intuitu matrimonii*, or an annualrent of 400 merks yearly during her lifetime; the woman, seeking thereafter reduction of the security made by her husband, with her consent, of that tenement, as done by her *metu reverentiali*, for fear of an awful answer, and cruel husband, and upon her revocation made since her husband's decease;—THE LORDS assolizied from the summons, albeit she had never ratified the infeftment by her oath given in judgment; because the LORDS found that judicial ratification not necessary, and were not moved with the reason founded *super metu reverentiali*, unless she had libelled *verum et expressum metum*, by relevant circumstances and deeds, and proved the same by lawful and ordinary means.

Haddington, MS. No 2497.

1613. *July 27.*LO. ROXBURGH *against* LADY ORKNEY.

No 276.

IN an action betwixt the Lo. Roxburgh and La. Orkney, for declaring of her liferent lands, holden of the La. of Brughton, as fallen in his hands by her rebellion, for year and day; the LORDS fand a horning of lawburrows, executed