

was paid for by them. Some of them set up steel mills, and the Earl pursued declarator of the thirlage, and proved those facts, and proved also by parole evidence the fining of some who bought ground malt out of the thirl, and brewed it in the town without paying multure, but no decreets were produced. The Lords declared in the astriction unanimously, though the defenders proved pretty often going to other mills, even in day-light, and sometimes passing by the mill, though not that the miller knew it, and though they alleged that 40 years possession was not proved against each defender.

MUTUAL CONTRACT.

No. 1. 1735, Jan. 29. KENNEDY, &c. against CAMERON, &c.

THE Lords found the defence that the contract is not performed relevant to *assoilzie in hoc statu*.—4th July 1734.

The Lords found the contract of marriage not voided, and remitted to the Ordinary to hear parties on the other parts of the bill. Royston, Newhall, Milton, Dun, *et ego* were all of this opinion, though the President demurred, but none opposed.

No. 2. 1734, July 13, 27. BARHAM against LORD MORDAUNT.

THE Lords found she could not recur to her tocher in respect of her renunciation of her liferent infestment. The Lords made some difficulty as to the general point, Whether the relict would have a preference on her own tocher, if there had been no renunciation by her of her liferent infestment, notwithstanding the bonds assigned for the tocher were assigned to the husband, not by the wife but by her father, and did not remain *in nudis finibus obligationis*? which was the case of Selkirk quoted for the relict, but was completed by intimation. Several Lords were against her preference, particularly Newhall, Dun, Milton, Murkle, *et ego*. But the President was clear of a different opinion, and Strichen seemed to join him; and because the decision betwixt Nisbet and Gordon of Troquhen was not produced, therefore the general point was not determined.—27th July, The Lords adhered.

No. 3. 1735, Jan. 18. LUTWIDGE, &c. against ARCHIBALD GRAY, &c.

THE Lords in Parliament having found the freighter liable for full freight of such of the goods as were given up to the insurer, and for the freight *pro rata itineris* for such of the goods as were brought to Glasgow, the freighters now claimed deduction of the salvage out of the freight. The Lords found they had no access to determine that point. Many of the Lords thought the judgment right in point of law, though the matter were entire. Lord Ilay was clear that we had no access to judge,—but afterwards they found the point yet entire, 25th July 1734.—18th January 1735, The Lords found the freight not liable in contribution for the salvage of the cargo.