thirlage of all grindable corns growing upon the lands, and gave the same decision as we did in the case of Carnwath, in January 1736, (No. 2,) viz. that it imports all grain growing on the lands that are necessary for the use of the families, or that they shall grind for sale or other uses; and therefore adhered, and refused. The President was of a different opinion, but he was *solus*. However he moved that it should be a split new interlocutor, to the end the point might be fixed.

No. 10. 1742, July 15, 28. ROBERTSON OF INCHES *against* SHAW OF TARDARROCH.

THE lands of Easter-Leyes, and mill thereof, with the astricted and free multures, being wadset by Lord Lovat in 1629, and Wester-Leyes, and Mid-Leyes, feued out *cum molendinis et multuris* in the *tenendas*, in 1641, and the reversion of the mill renounced in 1661; the possessors of Wester and Mid-Leyes constantly frequented the mill, and paid the 13th curn of multures till 1716, that the heritors threatened to leave the mill, and then it was reduced to the 16th curn, and the heritor was permitted to put in or keep in the millboy, though the miller inclined to another, and they never paid any services of any kind. These lands and mill appeared to be part of the barony of Dalcross, which lay at several miles distance, and it was said there were several other mills in the neighbourhood of these lands, whose outsucken multures, as well as the outsucken multures of the mill of Leys, was only the 32d part, or the half of what those lands paid at this mill. The Lords found these things sufficient to astrict these lands, (*me quidem renitente.*)—28th July, Adhered, and I altered my opinion.

No. 10. 1743, Dec. 20. TOWN OF MUSSELBURGH *against* WAUCHOPE, &c.

WE found as we had done in the case of the Earl of Wigton against the Town of Kirkintilloch, (No. 3.) that in a general constitution of a thirlage, not only thirlers are liable where they sell their own grain and buy meal or malt, but also that though they have none of their own, yet if they buy grain in order to be grinded for their families, they must pay multure; but not for grain bought and thereafter grinded for sale; though they are liable for their own grain grinded by them for sale. But we were much divided as to flour in the case of their selling wheat and buying flour for their family, whether that was thirled? and it carried thirled, six to five.—Murkle did not vote. The President was for the interlocutor, as I also voted. Arniston was against it.

No. 12. 1753, Nov. 21. EARL OF HOPETOUN *against* FEUARS OF BATHGATE.

THE Earl was infeft in the barony of Bathgate, (part of the principality) and in the mill, with the multures and sequels of the barony. The feuars of houses and kail-yards in the town, who were also brewers, were in use of bringing all their malt to be ground at the mill, and to pay intown multure; and one day in the week was allotted for grinding to them; and there was a carrier's horse that served the whole inhabitants, and

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 infeftment. 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 infeftment, 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.