

# CONSOLIDATION.

1542. July 1.

INNES against STEWART.

**A**LLEXANDER INNES claime the thirle multures of the corns that grew certain years bypast upon the lands of Blairmondi, as due by the tenant thereof to James Gordon, who held the lands of the said Alexander, and the said multures of the corns that grew upon the lands of Baidinspyle, against James Stewart heritable tenant thereof, holden of the said Alexander, because the said Alexander was heritably infeft in the hail forestry of Bony, with all the thirle multures of the lands thereof, and the lands foresaid ly within the said forestry. It was *excepted ex altera parte, quod non tenebatur cum solvere dicto Alexandro*, because they were heritably infeft and immediate tenants to him of the lands foresaid in blench, paying one penny money *albæ firmæ tantum si petatur pro omni alio onere* that might be asked of these lands *vel occasione earum cum molendinis et multuris*; and, because the said Alexander's father, who annalizied, as said is, these lands reseruit not the thirle multures to his said new mill of the forest of Bony, therefore might not claim the same, because it is ane duty that is auchtand *ratione occupationis terrarum, et sic occasione earundem*. And the LORDS, notwithstanding diverse allegiances made in the contrare, by their sentence *definitive decreverunt* the tenants free of all the said Alexander's claim, and sua the seller of the lands man warrand it to them of all charges, but allenarly them that he makes and specifies in the alienation making. And sua *venditor warrantizat terras venditas emptori ab omni redditu et alio onere quocunque de dictis terris nisi aliter conventum sit, inter ipsos tempore alienationis*. And sua the LORDS fand that this thirle multure is *onus reale et servitus quod non venit in contractu nisi hoc dictum sit, et multuram remitti nisi contrarium sit conventum, et hoc virtute specialium clausurarum reservatarum predictarum in chartis specificatarum*; and also, the said servitude *videbatur extincta eoque* after the said Alexander had coft the said multure of all the forestry, he got all the lands in heritage to himself, and sua the lands ought to have been thirled to himself, *quia res sua nemini seruit et sic illa servitus semel fuit extincta et consolidata cum superioritate et proprietate terrarum earundem et per alienationem partis earum reviviscere non potest*.

No 1.  
The Lords found, that a servitude of thirlage being once consolidated with the property, cannot be understood to revive again, when any part of that property is alienated, unless it be so expressed.

Fol. Dic. v. 1. p. 200. Sinclair, MS. p. 38.