conquest, upon which infeftment hath followed or may follow. And, as to decisions, there is a continued tract of four of them, the oldest upwards of sixty years back; so that if any thing be established by decisions, this must be. Add to this, the general consent of the nation, which appears from the general services of heirs of conquest, to be found in the Chancery even farther back than the 1675. Now, what could be the meaning of these general services, if incomplete real rights did not belong to the heir of conquest?

4*to*, Heirs of conquest are as much heirs of law as the heirs of line: See Stair, p. 456, § 10; heirs whatsoever apply equally to both, and sometimes to neither, according to the nature of the subject.

5*to*, Lastly, there is no reason can be given why the completing or not completing a right should make any alteration upon a man's succession; nor is there any example in law where it does. A man's succession is regulated by his own destination; and if, before infeftment, he destines it for his heirs of line, why should the livery of earth and stone make it go to the heirs of conquest? So that, in matters of succession, whatsoever may be said with respect to the rights when completed, may be said of them before they are completed.

The Lords found, That the above mentioned subjects went to the heir of conquest, and not to the heir of line.

Most of their Lordships seemed to be chiefly moved by the authority of the decisions; others thought the thing in itself reasonable, and according to law.

1740. *January* 22. STOTT *against* MAXWELL.

[Kilk.; No. 3, *Thirlage.*]

THE question here was, Whether use and wont for forty years, of paying insucken multures, and performing services to the mill, will, of itself, infer an astriction of thirlage, without any title or evidence of the constitution of the thirlage? The Lords found that it did; in respect the mill was a church mill, and the lands, said to be thirled, church lands; and churchmen *non tenentur docere de titulo*, for which reason, with respect to them, long possession hath been sustained as sufficient to instruct even the property. This is the opinion of Stair, p. 291, but contrary to the opinion of Craig, and an express decision, 17*th July* 1677, *Ross* against *M'Kenzie*, reported by Lord Stair. It was objected, that there was no evidence of any possession while the mill was in the hands of churchmen; but that the forty years' possession was after both mill and lands were in the hands of private persons. To which it was answered, That the possession was presumed *retro* to have been the same while the lands were in the hands of churchmen: Which the Lords sustained.

N.B.—It seems yet to be pretty much undetermined, what title is requisite in prescription of thirlage.