

*cymbæ et retis*; but it was reserved to be discussed, being proponed *peremptorie causæ*, as a right to elide the pursuer's right.

Act. *Cunninghame*.

Alt.

*Fol. Dic. v. 2. p. 363. Durie, p. 365.*

1629. February 21. KENNEDY against GRAHAME.

In a removing from some lands, with the mill thereof, the pursuer's sasine was sustained to produce action to remove, as well from the mill as from the lands libelled; albeit the sasine foresaid bore not, that the pursuer was infest in the mill by tradition of clap and happer, but only by tradition of earth and stone, which was found sufficient, the same bearing sasine to be given to him of the lands and mill, by tradition foresaid of earth and stone; and because also the sasine bore, in the clause of *acta erant hæc, &c.* that the same was done *super fundo dictarum terrarum et infra dictum molendinum et domum ejusdem*; albeit in mills usually sasine is given, and the words bear, "*per traditionem lie, clap et happer*:" And here also the less respect was had to the allegation proponed against the sasine, the same being proponed by a naked tenant, and not by one having right to the lands and mill.

Clerk, *Hay*.

*Fol. Dic. v. 2. p. 363. Durie, p. 429.*

\* \* \* Spottiswood reports this case:

In an action of removing pursued by David Kennedy of Kirkhill, against his tenants, alleged, They could not be decerned to remove from a mill libelled, because the pursuer's sasine bore him not to be seised thereinto by clap and happer, as use is. Replied, That ought to be repelled, in respect of his sasine, which was given conform to the precept, *per terræ et lapidis traditionem*. The Lords sustained the sasine for the mill, notwithstanding it was not according to the usual custom; because sasine was taken at the mill, as well as upon the lands.

*Spottiswood, p. 209.*

\* \* \* Kerse also reports this case:

In an action pursued by David Kennedy *contra* his tenants, alleged, They could not be decerned to remove from a mill libelled, because the pursuer's sasine bore him not to be saised thereintil by clap and happer, as use is. Reply repelled, in respect of the sasine, which was given conform to the precept *per terræ et lapidis traditionem*. The Lords sustained the sasine for the mill notwithstanding.

*Kerse, MS. f. 95.*

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The same with regard to a mill, where clap and happer were not mentioned.