

No. 13.

1630. June 17. EARL WIGTON *against* EARL CASSILIS.

A SASINE in a competition was sustained, although it bore not that the same was given by delivery of earth and stone, or by such symbols as are usual in giving sasines; but only carried that the bailie gave actual, real, and corporal possession of the lands, without mention of any further tradition; but here the party, the bailie, and the notary, were all of a long time dead.

Fol. Dic. v. 2. p. 363.

* * This case is No. 138. p. 2246. *voce* CITATION.

1631. March 15. L. SMEITON *against* VASSALS of DUMFERMLINE.

No. 14.

Traditio cum omni juris solemnitate, found sufficient in sasine of a mill without mentioning clap and happer.

THE pursuer, as heir to his father, who was infest in the lands and mills libelled, pursuing the defenders for improbation of their writs of the said lands and mills libelled; and the defenders alleging, That this sasine of the pursuer's could not furnish him action, to improve any of the defenders writs of the said mills, because the precept directs warrant to take sasine *per expressum* of the lands and mills, *per terræ et lapidis traditionem, nec non lie clap et happer super fundis molendinorum*; and the sasine bears no tradition of the clap and happer, which are the ordinary symbols for sasine of mills; likeas the precept also appoints the same;—this allegiance was repelled, and the sasine sustained, seeing it bore sasine to be given both of the lands and mills, *per terræ et lapidis traditionem fundi hujusmodi terrarum et molendinorum, cum omni juris solemnitate*; which the Lords found sufficient, and would not annul the sasine for that omission, albeit the pursuer was not in possession, nor any of his predecessors, by virtue of the sasine, but the defenders were ever possessors, which was not respected.

Act. Nicolson.

Alt.

Clerk, Hag.

Fol. Dic. v. 2. p. 362. Durie, p. 581.

1631. March 23. SOMERVEL *against* SOMERVEL of Drum.

No. 15.

The same with regard to an annual-rent, though there was no mention of a penny money.

IN a double-poining of the ground of annual-rent, wherein the pursuer was infest by precept of the heritor of the land, granter of the annual-rent, conform to the charge upon a retour, executed at the pursuer's instance, as heir to the first acquirer of the annual-rent, from the said Hugh Somervel of Drum; the first annual-renter's sasine being quarrelled, as null, because it bore not sasine to be taken *per traditionem denarii*, which is a necessary symbol required to sasines of annual-rent, specially seeing this is proponed to elide an action upon an old sasine, 36 years since, and never clad with any possession, and therefore ought to be

the more favourably received. This allegiance was repelled, because the sasine bore, "the same to be given and done according to the solemnities used in such cases;" and the Lords would not annul the sasine for this defect alleged. And the defender alleging further, That the ground could not be poinded for the years betwixt the time of the pursuer's predecessor's decease and the pursuer's sasine, because the same, during that space, was in his hands, as superior, by non-entry; and the pursuer replying, That he could not be heard to allege non-entry, because, by the contract of alienation made betwixt him and his umquhile predecessor, he was obliged to pay the said annual-rent, as well infest as not infest; the Lords found, That this contract might be a ground to produce personal action, or execution thereupon, against the defender; but that they would not thereupon sustain this action to poind the ground as a title thereto.

Act.

Alt. Gray.

Clerk, Hay.

Fol. Dic. v. 2. p. 362. Durie, p. 585.

No. 15.

1682. January. LADY LAMERTOUN against HOME of Polwart.

ALEXANDER HOME, of Halyburton, having granted a bond to Alexander Home of Huttonhall, and Elizabeth Home his spouse, and longest liver of them two, for an yearly annuity of 600 merks, and, for security thereof, did bear an obligation to infest, and precept of sasine, for security of the same, out of the lands of Greenlaw; which being assigned to the Lady Lamertoun, and she having pursued a poinding of the ground against Sir Patrick Home of Polwart, now heritor, and the tenants and possessors of the lands; alleged for Polwart, That the sasine is intrinsically null, because it wanted the necessary solemnities and symbols requisite by law and custom, and could not be looked upon as the sasine of annual-rent, because it did not bear delivery of a penny money, nor as a sasine of the lands, because it did not bear the usual symbol of delivery of earth and stone; nor did it bear the usual words, of giving real, actual, and corporal possession; nor was the tenor of the precept engrossed in the sasine, but was of an universal style, that the notary gave liferent sasine, by delivery of the ground, as use is; so that there being a concurrence of nullities in that sasine, and sasines being *actus legitimi*, which require several solemnities, the want of any of these solemnities makes the sasine null; just as the execution of a horning, comprising, or other legal diligence, should want the three *oyesses* in the execution at the market-cross, or six knocks at the most patent door in the execution at a party's dwelling-house; and the like will make the execution null; and law and custom do not allow these solemnities thereafter to be supplied, albeit it were proved that these acts were truly done; much more ought a sasine, that wants all the formalities abovementioned, be found null. And Hope, in his Larger Practicks, Precepts, and Instruments of Sasine, observes, That sasines has several symbols, according to the different nature of the thing for which sasine is to be taken; as a sasine of lands is *per*

No. 16.

A sasine, in which the particular symbols were not mentioned, sustained on account of a general clause.