

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 infeft 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 infeft 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