

SECT. III.

General Clause of Tradition, CUM OMNI JURIS SOLEMNITATE.—General Clause of State and Sasine.—Where there are several Creditors in the same bond.

1611. February 7. LADY PITSLIGO *against* TENANTS.

No. 10.

Sasine of a mill sufficient being taken in the mill-house, though no mention of delivery of clap and happer. See No. 12. and No. 14.

The old Lady Pitsligo pursued the tenants of Dunslands to remove. It was found, that a sasine was sufficient, that the giver or his baillie *accessit ad terras*, &c. and gave sasine; albeit in the clause *acta erant*, there no mention be made of the place where sasine was taken, but only of the hour and witnesses, because the first clause of *accessit ad terras* designs, upon what place the sasine was taken, as sasine of a mill is sufficient, being taken in the mill-house, albeit it make no mention of delivery of the clap. An exception proponed by the tenants, that they were tenants to their master, who was heritably infest, and to whom they had made payment there of their maills and duties 13 years, was found relevant, notwithstanding the reply that they had paid their maills to the pursuer's husband 20 years, and could not invert his possession. An exception found relevant upon payment made to the donatar of the ward of the said lands, constituted by my Lord Forbes superior by decease of Forbes his vassal, and their payment of their duties to the donatar five or six years before the warning.

Fol. Dic. v. 2. p. 363. Haddington MS. No. 2150.

1628. March 21. MAXWELL *against* L. PORTRACK.

No. 11.

A sasine carrying salmon fishing was sustained, with a general clause of state and sasine, without the clause *per traditionem cymbæ et retis*.

In a removing, Maxwell of Cowhill *contra* Portrack, from a fishing, the Lords sustained the pursuer's sasine produced for his title in this removing from a salmon fishing; albeit the sasine bore not expressly, that sasine was taken of that fishing *per traditionem cymbæ et retis*, but only bore that the baillie came to the ground of the land, fishing, and others therein contained, and thereupon gave state and sasine of the same; and in the words *acta erant hæc*, it says only *acta erant hæc super fundis dictarum terrarum aliarumque particulariter supra specificatarum*; which the Lords found sufficient, where the defender alleged no right to the fishing in his person; and albeit thereafter he alleged he was infest in *piscationibus cum traditione cymbæ et retis*, yet that was also repelled, being proponed only *ad hunc effectum*, to make the pursuer's sasine null, for want of the like clause *traditione*

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.

No. 12.

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