husband. The defender *answered*, That the wife was liferenter of the sum, and she and her second husband would certainly have sought her annualrent, or claimed the sum, which takes off the excuse of the pursuer's minority; and albeit writ be not taken away by witnesses ordinarily, yet where the matter is so ancient, and the evidences so pregnant, the Lords use not to refuse to examine witnesses *ex officio*. No 86.

THE LORDS *ex officio* ordained witnesses to be examined as to the being of the bond in the custody of Minto, or his doers, being a matter of fact; but would not examine them as to the payment made thereof.

Stair, v. 1. *p.* 719.

1671. *July* 22. ALICE MILLER *against* BOTHWELL of Glencorse. No 87.

ALICE MILLER pursues improbation of a minute of a tack betwixt her and Glencorse, who compeared and abode by the verity of the tack; and the writer and witnesses of the tack being examined upon oath, did depone, that they did not see Alice Miller subscribe; and one of them deponing, that he had subscribed at Glencorse's instigation, who told him, that he had caused set to Alice Miller's name, only one witness who was writer, and was Glencorse's brother, deponed, that he saw the said Alice Miller subscribe with her own hand.

THE LORDS having this day advised the cause, found that the witnesses did not abide by the verity of the subscription of the said Alice Miller, and did therefore improve the minute; but found it not proved who was the forger of the said Alice Miller's subscription.

Stair, v. 1. *p.* 765.

1671. *December* 9. No 88.

ISABEL and HELEN HAYS *against* Sir GEORGE HAY of Pitcullen, their Brother.

A decree-arbitral, bearing to grant a renunciation with absolute warrandice, was found so far reducible, as to bear warrandice only from fact and deed, upon the deposition of the arbiters to this effect, after they were *functi*.

BY a decreet arbitral betwixt Sir George and his two sisters, they are decerned to renounce whatever could befal to them by the decease of their father and mother, and particularly half a year's annual duty of their mother's liferent, which might have fallen to them as executors, which denunciation they are decerned to warrant against all deadly, whereof they having intented reduction upon this reason, that the absolute warrandice was filled up by the writer without the knowledge or consent of the arbiters, and therefore ought to be only from their own fact and deed, as being only proper for renunciations of rights bearing no disposition; it was *answered*, That the decreet being subscribed and performed on Sir George's part, the arbiter's oaths or declaration could not now

No 88. be taken in his prejudice, they being *functi officiis*; and could only be taken away by Sir George's own oath. THE LORDS having taken the declaration of the overseman and some of the arbiters, who declared, that it was agreed that the warrandice should only be from fact and deed, they decerned the sisters to be no further liable, in respect that *ex natura rei* they could not be further obliged in law, which seems hard.

Fol. Dic. v. 2. p. 122. Gosford, MS. No 419. p. 211.

1673. *January* 10. LAWRIE of Blackwood *against* Sir JOHN DRUMMOND.

No 89.
A disposition had been written out with a blank for the disponee's name, and filled up with another hand. It was not allowed to be proved, that it had been filled up after the granter's death, otherwise than *scripto vel juramento*.

IN a reduction at Blackwood's instance, as having adjudged from the apparent heir of Sir Robert Drummond the lands of Meidhope, of a disposition made to Sir John of the said lands, upon this reason, that the disposition was lying by Sir John, and filled up in his own name after Sir Robert's death, which was offered to be proved by the writer and witnesses who were present at the filling up thereof; it was *answered*, That the reason was not probable but *scripto vel juramento* of the defender, the same being now in his possession, and in law could not be otherwise taken from him. It was *replied*, That in such cases the Lords, *ex nobili officio*, might examine witnesses specially, Sir John's name being filled up with another ink and hand; likeas, they craved Sir John's oath of calumny, if he had reason to deny the same; in that case the LORDS declared, that they would not find the reason probable by witnesses, if the defender being ordained to give his oath of calumny should declare, that he had reason to deny the same, as being against our law, and of a dangerous consequence.

Fol. Dic. v. 2. p. 217. Gosford, MS. No 553. p. 298.

No 90.
It being alleged against a bond of provision, that when the granter was on death-bed, he gave his wife warrant to cancel the bond, this was found relevant to be proved by the wife and other witnesses.

1673. *November* 7. CHISHOLM *against* CHISHOLM.

CHISHOLM of Hairhope having subscribed a bond of 7000 merks for the provision of his younger children, and having afterward disponed his estate to his eldest son, caused him grant a bond of corroboration in favour of the children, which the father kept; and the mother having both bonds in the father's pocket after his death, and lent them to one of the children, he caused transcribe them by two notaries and four witnesses, and having given them back to her they were abstracted, and the children pursue for proving the tenor of them. The heir's oath of calumny having been taken, he acknowledged there were such bonds, but remembered not the tenor of them, which, with the notary's attested doubles, were found sufficient adminicles to sustain the tenor, and the tenor was found proved by the oaths of the notaries and witnesses. It was *alleged* by the heir, That both his father's bond of provision and his corroboration were