

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*.

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.*

No 86.

1671. July 22. ALICE MILLER *against* BOTHWELL of Glencorse.

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.*

No 87.

1671. December 9.

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

By a decret arbitral betwixt Sir George and his two sisters, they are decerned to renounce whatever could befall 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 intended 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 decret being subscribed and performed on Sir George's part, the arbiter's oaths or declaration could not now

No 88.

A decret-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*.