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