

wadset, and producing the contract, with her subscription at the same, with an act extracted out of the Sheriff-registers of Tiviotdale, subscribed by the Clerk thereof, bearing, that she compeared judicially in judgment before the Sheriff, and subscribed the said contract out of the presence of her husband, and made faith that she consented thereto voluntarily, and ratified the same; and she *duplicating*, That that act, nor the warrant of the same, was not subscribed by her, and was but the assertion of a notary, and her alleged subscription at the contract not being done before witnesses, and no witnesses being inserted thereto, it was null, and so could not prejudice her; and the pursuer *tripling*, that although there were no witnesses inserted to her subscription, yet seeing the judicial act produced bore her to have subscribed the same in judgment, and that she had judicially ratified the same, it is enough to sustain the contract, and is more than if there were witnesses inserted; the LORDS found not this act sufficient to denude the woman, and to verify her consent, nor yet her subscription of the contract, seeing it bore not to be done and subscribed by her before witnesses; seeing the same contract subscribed (as it bore) by her, ought to have made mention, that she subscribed the same before witnesses, who ought to have been inserted in the contract, and to have reported, that she subscribed the same before them; but found, that the party might condescend upon the witnesses their names who saw her subscribe the same, and that yet they might declare the same; but that it was not enough that the act declared that she subscribed the same judicially, but that he should condescend upon the witnesses present, before whom she subscribed it, and abide at the same in that manner. See WRIT.

Act. —.

Alt. *Gilmour*.Clerk, *Scot*.*Fol. Dic. v. 2. p. 248. Durie, p. 743.*

1635. January 30.

MITCHELSON against MOUBRAY.

A JUDICIAL ratification upon oath not to come in the contrary, made by a wife *stante matrimonio*, though entered in the books of a Sheriff-Court, and signed by the Clerk, is void, if not signed by the wife herself.

*Fol. Dic. v. 2. p. 248. Durie.*

\*\*\* This case is No 164. p. 5960, *voce* HUSBAND AND WIFE.

No 408.  
not probative,  
not being  
subscribed by  
her.

No 409.