

No 406.

tors, were not obligatory against the parties acted without their own subscription: This allegiance was repelled, and the act was found sufficient, albeit not subscribed by the Magistrates and Council of the town, who were parties obliged, but only by their Clerk, seeing it was an act judicially done, and registrated in their court-books, and that the pursuer offered to prove, that at the time of the making of this act, the Magistrates and Council of Perth were in use to act themselves after this manner, and to grant obligations to diverse parties, by acts only subscribed by their Town Clerk, as this act was, and not to oblige themselves by their own subscriptions, and that these acts so made have taken effect and been satisfied by them, it being their custom to bind themselves after that manner at that time; which reply the LORDS found relevant to maintain this act and pursuit libelled founded thereon; neither were the Lords moved with the alleged practices, whereby acts made and subscribed by the Town Clerk, wherein other debtors were obliged to their creditors, were found null, as not being subscribed by the persons thereby obliged, because there was difference in obligations made by one party to another, in which deeds the Clerk could have no other respect than as due to another common Notary, whose subscription could not bind the debtor, whereas the case is otherwise when the Town bind themselves to a party, and where the Clerk in these cases is their public officer and their servant, and where they were in use to bind themselves effectually to others after that same manner.

Act. —.

Akt. Chair.

Fol. Dic. v. 2. p. 249. Durie, p. 253.

No 407.

1628. *March 26.* LORD LOVAT *against* SHERIFF of NAIRN.

A SHERIFF having caused a person enact himself with a cautioner to compear before the Justices, and underlie the law for murder, under a penalty, this was not found probative, not being subscribed by the party.

*Fol. Dic. v. 2. p. 249. Durie.** * * This case is No 367. p. 766I. *voce* JURISDICTION.

No 408.

An act subscribed by a sheriff-clerk only, bearing that a wife had judicially ratified a deed, found

1635. *January 22.*BELL *against* L. Mow.

THE L. Mow having wadset his lands to one Bell, who setting the lands in back-tack for payment of a back-tack duty, and after the decease of the L. Mow, arresting the duties of the lands in the tenants' hands, and pursuing them thereupon to make them forthcoming, Nisbet, relict of the Laird Mow, who was liferenter of the lands before the wadset, compearing, and defending with her said right, the pursuer *replying*, that she had consented to the contract of

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.