The Railway Company did not deny liability, but considered the claim of damages excessive; and it was to that point that the attention of the jury was specially directed.

Scott and Watson for pursuer.

Young and Johnstone for defenders.

The jury assessed the damages at £1100.

Agent for Pursuer—A. K. Morison, S.S.C.

Agents for Defenders—Hope & Mackay, W.S.

Friday, June 12.

FIRST DIVISION.

RUSSEL AND SON *v.* GILLESPIE.

Agreement—Mineral Lease—Underground Working—Construction. Construction put upon a clause in a mineral lease, which declared that the underground workings should not be carried nearer to the mansion-house, offices, garden, and steadings, than so many yards.

In the Torbanehill mineral lease, granted by the defender to the pursuers in 1850, it was stipulated that the underground workings should not be carried nearer to the mansion-house than 100 yards, nor nearer to the offices or garden than 30 yards, nor nearer to the steadings than 20 yards. The minerals having greatly risen in value, disputes arose as to the meaning of the above stipulation, and the pursuers, the lessees, brought an action of declarator to establish their rights. The questions in dispute are explained in the note of the Lord Ordinary (Barcaple), who gave effect to the contentions of the pursuer. His Lordship said:—

"The first question is, Whether, in giving effect to the provisions that underground workings are not to be carried nearer to the buildings than the distances prescribed, the distance is to be measured from the external walls at the surface of the ground, or from the underground projections of the foundation. The defenders maintain that, on this point, the words of the lease are quite distinct, and must be read in their plain literal sense. The Lord Ordinary is of opinion that the provision requires construction. It is not disputable that the underground workings must stop at a point which will be actually more than the prescribed distance from any part of the buildings, and that this distance will be greater in proportion to the depth of the workings. The distance must be measured, not from the buildings themselves, but from a perpendicular line projected downwards from some part of them where it reaches the level of the workings. The popular meaning of the words of the lease does not suggest the notion that it is the projecting foundations of the buildings that are referred to, and that construction seems to be excluded by the immediate context. The same expressions are not used in prescribing the distances within which operations shall not be carried on upon the surface, and carts or carriages shall not be allowed to pass through the park. The Lord Ordinary thinks it is impossible to read these provisions as having reference to the underground foundations, or to hold that the words have different meanings in the same clause.

"The Lord Ordinary thinks that the provision as to the mansion-house cannot, with reference to the present question, be extended so as to include the court-yard attached to it. There might be an uncovered court in a recess, partly surrounded by a mansion-house, which would justify such a construction. But looking to the position of this court and its construction, the Lord Ordinary does not think it can be reasonably held to have been the meaning of parties, that it was to be comprehended in the provision as to the mansion-house. He entertains the same opinion in regard to the open space enclosed with a wall in front of the offices.

"The Lord Ordinary would have arrived at these conclusions independently of the evidence of engineers and architects which has been adduced. But in so far as that evidence may be entitled to weight in such a question, it supports the views of the pursuers.

"The Lord Ordinary does not think that, at any time, the whole space between the garden-wall and outer fence, composed of a hedge and ditch, could properly be called a garden. When the lease was entered into in 1850, no part of it was so used; and the Lord Ordinary thinks that there was nothing to suggest to either party that the provision as to the garden applied to anything external to the garden wall. On the whole, he is of opinion that, according to understanding of parties, grounded on the natural meaning of the words used and the state of the subjects, the provision had reference only to the enclosed garden and the garden wall.

"He is also of opinion that the pond and dovecot cannot be held, with reference to this question, to be part of the offices. In point of fact, they are not parts of the offices, and it would be a very extensive construction which should hold them to be so. But it seems to be conclusive of the question, that the road which passes between them and the offices is said in the clause, which it is sought to construe, to pass on the north side of the offices."

The defenders reclaimed.

Gifford and Asher for them.

Young, Clark, and Gloag for respondent.

The Court were of opinion that the unroofed court attached to the mansion-house was, in this question, to be held as part of the mass of buildings constituting the mansion-house, and, on that point, therefore they differed and found for the defenders, but on the other points they agreed with the Lord Ordinary; Lord Deas differing on the question of the garden, and holding that the outer garden, as well as that enclosed within walls, was intended to be included in the term "garden" in the clause of reservation.

Agents for Pursuers—Wilson, Burn, and Gloag, W.S.

Agents for Defender—Morton, Whitehead, and Greig, W.S.

Friday, June 12.

ROBERTSON (TAYLOR'S FACTOR) *v.* TAYLOR AND OTHERS.

Donation—Husband and Wife—Donatio Mortis Causa—*Parol—Acquiescence*—Jus Mariti. Circumstances in which *held* that a sum of money given by a husband to his wife on deathbed was a *donatio mortis causa*, proveable by parol.

Trust—Memorandum—Proof. Held, on a proof, that trustees were entitled to take credit for certain payments to beneficiaries, made by them in terms of a memorandum found in the repositories of the deceased.

Annuity—Trust—Burden—Fee—Liferent. Held,

on construction of a clause in a settlement, that an annuity to a widow was a preferable burden on the fee as well as on the income of the estate.

These were conjoined actions of count, reckoning, and payment, and multiplepoinding, at the instance of Lawrence Robertson junior, judicial factor on the trust-estate of the late William Taylor, merchant in Glasgow, against Henry John Taylor, merchant in Glasgow, and others. The principal questions discussed were these:—

1. The deceased William Taylor, shortly before his death, handed over to his wife a sum of £3600, which was deposited in bank in her name before Taylor's death. Parties differed as to whether this sum remained part of Taylor's estate, or was a valid donation, never revoked, to Mrs Taylor.

2. Another question arose as to a sum of £2000, alleged to have been left in William's hands by his brother John Taylor, to be divided among William's children; and which sum the trustees of William, after his death, admittedly divided, the division being made according to a memorandum holograph of James Taylor, and found in William's repositories, to the following effect:—H. £500; A. £300; M. £200; Mary, £300; E. £200; M. £200; W. £300; total, £2000.

3. The remaining question was, whether an annuity provided to William Taylor's widow was preferable to the other trust purposes, after payment of debts and expenses?

The Lord Ordinary (BARCAPLE) found "that the truster, the late William Taylor, when on his deathbed delivered to his wife, the late Martha Kirkwood or Taylor, or to his son Henry John Taylor, the sum of £3600, mentioned in the records, for the purpose of being deposited in bank in her name, and that the same was deposited, in terms of the directions of the truster, by the said Henry John Taylor in her name in the Royal Bank of Scotland on 22d April 1829, before the death of the truster, and remained so deposited at and after his death: Finds that a donation was thereby constituted of said sum of £3600 by the truster to his said wife, and that the same was never revoked by the truster: Finds that the payment by the trustees of the sum of £2000 among the surviving children of the truster who were alive at the death of the truster's brother John Taylor, as the division among them of that sum, said to have been deposited with the truster by the said John Taylor for the purpose of being divided among them, will, if properly vouched, fall to be sustained to the credit of the trustees, as having been made by them in the *bona fide* execution of the trust: Finds that the annuity of £400 constituted by the trust-settlement in favour of the truster's widow is preferable upon the fee as well as the income of the estate, in competition with the other provisions constituted to the settlement," and remitted to an accountant for a report on his accounting. His Lordship added, in a note:—

"1. £3600.—The question as to this sum is, whether it was the subject of a donation by the truster to his wife? The statement of the judicial factor, who claims it as having been *in bonis* of the truster at the time of his death, is, that when he was on deathbed he handed it to his wife, and that it was deposited in her name before his death in the Royal Bank of Scotland, on 22d April 1829. It is thus the case of both parties that, in the lifetime of the truster, he handed this sum of money to his wife. Mrs Skinner, who is also seeking to reclaim this sum as having been *in bonis* of her father, says, as a witness, that she saw him give it to her brother Henry John Taylor, desiring him to take it and put it in bank. Henry John Taylor swears that he received the money from his father for that purpose, and that he deposited it in his mother's name. The bank deposit-receipt in Mrs Taylor's name is produced. The handing over of the money must therefore, it is thought, be taken as a fact in the case; and the depositation may be dealt with as if it had been made by the truster personally. The questions are, *quo animo* was this done, and what is its legal effect? A great number of decisions were referred to as to the competency of parol proof in such a question, and the effect which can be given to it if admissible. The Lord Ordinary has gone over these authorities, but he does not think it necessary to advert to them in detail. The cases of *Barbour* v. *Blackwood*, 8th February 1753, M. 6097, and *British Linen Company* v. *Martin*, 11 D. 1004, have some elements in common with the present case; which, however, he feels to be in various respects peculiar, and to raise the question of proof of donation in a form both new and difficult. He has come to the conclusion, upon a consideration of the authorities, that parol evidence is competent in this case. As to the import of the evidence, he does not think that the discrepancies between the accounts given by Mrs Skinner and Henry John Taylor, the only surviving eye-witnesses of what passed when the money was handed over by the truster, are material. The most important is, that Mrs Skinner says her mother was not in the room, while, according to H. J. Taylor, she was present on both the occasions to which he speaks. But the Lord Ordinary does not think that this is a difference of such importance as to affect the weight of their combined testimony upon the main point, that the money was given to the son to be deposited in name of his mother. The witness Mrs Stevenson speaks to the truster telling her that he had given it to his wife to do what she pleased with; and the evidence of Mr Hugh Stevenson, as to what the truster said to his agent upon the subject when he was signing his will, is of still more importance, and is materially corroborated by the terms in which Mrs Taylor's settlement was afterwards expressed by the same agent. It does not appear to the Lord Ordinary to derogate from the intention to make a donation that, according to Mrs Skinner, the truster said "it would save king's duty." That was a natural motive, among others, for giving the money to his wife in his lifetime, if he had confidence that she would use it as a parent for the benefit of the family. On the whole matter, the Lord Ordinary is of opinion that donation is proved.

"2. £2000 alleged to have been left in the hands of the truster by his brother John Taylor, to be divided among the truster's children.—This sum is stated to have been divided among the surviving children of the truster, who were born before the death of John Taylor. A jotting, proved to be holograph of John Taylor, but not signed by him, is produced, containing, among other similar matters, what appears to be a note of the division of the sum of £2000 among the seven children of the truster, who are indicated for the most part by the initials of their christian names. There is also the evidence of John Taylor, a nephew of the truster, who speaks to his uncle, John Taylor, having told him that he had given the truster that sum to be divided among

his children, in the proportions mentioned in the jotting, and to his having seen the jotting at the time. This parol evidence would not have been competent in support of a claim made against the truster, on the allegation that he held the £2000 in trust for his children. But the Lord Ordinary does not think it is to be altogether rejected in a question as to whether the payment of this sum to the children is to be sustained in the accounts of the trustees. They found upon the holograph jotting by John Taylor, and the clause of the trust-deed authorising them to pay the truster's debts, 'without the necessity of legal constitution, if satisfied of the justice thereof.' The Lord Ordinary thinks that the payment of this sum, assuming it to be properly vouched, must be sustained to the credit of the trustees, as having been made by them in the *bona fide* execution of the trust."

"4. Claim for arrears of widow's annuity by H. J. Taylor, as her general disponee.—By his trust-deed, the truster 'burdened' the trust-subjects with payment of a free liferent annuity of £400 to his widow, which he appointed his trustees to see paid from the first and readiest of his said subjects. H. J. Taylor, as general disponee of his mother, claims arrears of this annuity. The only point in regard to this claim which the Lord Ordinary thinks can at present be disposed of, is the question as to whether the annuity was preferable to the other trust-purposes, after payment of the truster's debts and expenses of the trust. The cases of *Casamajor* v. *Pearson*, 2 Rob. Ap. 217, and *Currie* v. *Threshie*, 8 D. 1021, were referred to as adverse to the claim. But the Lord Ordinary thinks that these cases are entirely distinguished from the present. In the present case the truster, immediately after providng for payment of his debts and the expenses of the trust, burdens the whole trust-subjects with payment of a free annuity of £400 to his widow, and he directs it to be paid from the first and readiest of these subjects. This is not language, such as occurred in the cases referred to, appropriate for the constitution of an annuity payable out of income. The Lord Ordinary does not think that the term 'liferent annuity,' as it is used in the present case, can be taken as intended to constitute a proper liferent, which would only give right to the fruits of the liferented subject. It seems to him to be clearly intended only to indicate the period for which the annuity was to last. It is further material to notice that in an additional trust-deed, which must be read along with the former one, the truster declares that the whole provisions made by both deeds upon his wife shall be accepted of in full of her legal right. The Lord Ordinary is of opinion that an annuity so constituted in favour of a widow, is preferable to the other provisions upon the fee as well as the income of the estate."

Robertson and Others reclaimed.

YOUNG, FRASER, CLARK, GIFFORD, SHAND, WATSON, LAMOND, BALFOUR, and KEIR, for claimants.

At advising—

LORD PRESIDENT—The first question disposed of by the Lord Ordinary, and I think rightly, at this stage, for clearing the way to an accounting, is as to the £3600. His Lordship finds that [*reads first finding*]. About these facts there can be no doubt, and farther, it cannot be disputed that the delivery of the money was made by the truster when on his deathbed. But then, the Lord Ordinary finds that a donation was thereby constituted of said sum of £3600 by the truster to his said wife; and that the same was never revoked by the truster. That is the question to be determined with regard to this sum, whether it was delivered by the truster *animo donandi?* That unquestionably depends on the parol evidence, and there is a good deal of parol evidence. There is the evidence of Henry Taylor himself, who is the party who received the money for the purpose of depositing it in his mother's name. Then there is the evidence of the mother, and also the statements made by the truster as to what he was about to do, and also, subsequently, as to what he had done. Taking all these together I am satisfied that the gift has been proved, but I think it is of some consequence to attend to the nature of the gift, for it removes a certain difficulty in dealing with the case.

It must be observed that, when the gift was made, the truster was on his deathbed. Not only did he expect to die, but it was known that his death was inevitable. He was dying in the ordinary course of nature; not as a man in middle life might die, by acute disease, from which there was a chance of his recovery. It is plain, therefore, that this gift was made *intuitu mortis*. Whether it was in that view what we call a *donatio mortis causa*, is of some consequence. If it is a *donatio mortis causa* then it falls under the rule of *Morris* v. *Riddick*, and there is no doubt of the competency of parol evidence. I think it is *donatio mortis causa*. I think that by means of delivering the money and lodging it in a deposit-receipt in name of his wife, he intended to transfer, and did transfer, a present right to his wife; and I have as little doubt that if by any chance his life had been prolonged, and he had recovered from the illness under which he laboured, that gift would not have received, and was not meant to receive, effect. Therefore I think we have here all the necessary conditions of *donatio mortis causa;* and holding it to be so, I receive without scruple the parol testimony by which the gift is established. That disposes of the first question.

The second question relates to the £2000; as to which the Lord Ordinary finds that [*reads third finding*]. It is important to observe from these findings that the Lord Ordinary deals with this as a question of accounting by the trustees. They have divided the money, and the question is, whether they have done that under such circumstances and good faith as to entitle them to take credit for the amount, producing, of course, vouchers for the different sums? This is a peculiar case, but I do not think it is attended with much difficulty. The evidence by which it is said to be proved that £2000 was given by the deceased John Taylor to William Taylor, for the purpose of being divided among William's children, is, in the first place, a jotting in the handwriting of John Taylor, the donor; and, in the second place, the evidence of a gentleman named John Taylor, of Dundas Street, Glasgow. The jotting is admitted to be in the handwriting of John Taylor, and contains some other things besides the division of this £2000; but they are of the same kind, and, oddly enough, it contains the division of another sum amongst the members of the family of another brother. The one with which we are concerned divides the sum in this way. Taking the initials as referring to the different children, there is £500 to Harry; £300 to Ann; £200 to Martha; £300 to Mary; £300 to William; £200 to Elizabeth; and £200 to Margaret, making up exactly £2000. This jotting is not subscribed by John Taylor but is in his handwriting, and, as I understand, was found in the repositories of William,

and it would seem to have been given to him as a direction what to do with the money. That jotting, if it had stood alone, would not have been very satisfactory, for it is a rough and irregular writing, and might mean something else, but I think the evidence of John Taylor removes all reasonable ground for doubt. He says that his uncle, John Taylor, died in 1819. "He was married, but he had no family. I knew him well, and saw him almost every day for some time before his death. He spoke to me about a sum of £2000 that he had given William Taylor. He said William Taylor was to distribute it among his children in different proportions. Henry John Taylor was to get £500; Ann Taylor £300; and the other children £200 or £300 each. He spoke to me twice about this. He said he had left a jotting about it, and given it to my uncle William. I saw the jotting at that time." And then he identifies the jotting as John Taylor's handwriting. "He also gave £2000 to James Taylor, my elder brother, which was to be divided amongst his younger brothers. I got £500 of it myself."

And then he makes the statement—"My uncle William of Over-Newton spoke to me about the sum of £2000 that he had got for the purpose of dividing among his family. He did so after the funeral of my uncle John. He said that he had got the sum of £2000, and my brother James was present, and he confirmed it by saying that he had drawn it from the bank by a check signed by my uncle John. My brother James was John's clerk."

If this witness is to be believed, and there is no suggestion to the contrary, we have his evidence of statements as to the disposal of this sum, both by the donor and by the donee and his family. The donor tells this witness that he had given £2000 to his brother for the purpose of being distributed, and he shows the witness the way in which it was to be distributed. On the other hand, we have the statement of the testator himself that he held it for that purpose. The question is not whether, in any strict view of law, this would have been competent or sufficient evidence as between truster and trustee, or as in a question between John and his representatives and William in his lifetime. The question is, whether with this information, combined with other information, the trustees were justified in applying the sums in terms of the memorandum? I think, with the Lord Ordinary, that they were perfectly justified, and, therefore, that this must be sustained as an item of credit.

As to the third question, of the arrears of annuity, that rests entirely on the question whether that annuity of £400 was a preferable burden on the testator's estate. I see no ground for doubting that. The words in which the provision is expressed are—"I hereby burden my said subjects with payment of a free liferent annuity of £400 sterling to Martha Kirkwood, my spouse, during all the days and years of her life after my decease, payable the said annuity at two terms in the year, Whitsunday and Martinmas, by equal portions, and beginning the first term's payment at the first of these terms which shall occur after my decease, and which I hereby appoint my said trustees to see paid from the first and readiest of my said subjects.

There are no words more apt or sufficient to create an annuity a preferable burden chargeable on the fee as well as the liferent; and therefore, on that point also, I agree with the Lord Ordinary.

Lord Curriehill—I concur in the opinion of your Lordship, and shall only make two additional observations. First, that the question, whether this donation was a donation *mortis causa* or *inter vivos*, appears to me to be of no material importance in the circumstances of this case, for, whichever it was, it was never revoked. Second, that in addition to the evidence to which your Lordship has referred, the acquiescence and to some extent the homologation of these parties for more than 30 years is an important element in support of your Lordship's view.

Lord Deas—I think I may say I concur in all your Lordship has stated, and I shall only make one or two explanatory remarks as to the £3600.

I agree with Lord Curriehill that practically it makes no difference whether this was a donation *mortis causa* or *inter vivos*, but it makes a great difference as to the law; and if we were called on to dispose of it on the footing on which Mr Young pleaded it, as a *donatio inter vivos*, I should have difficulty in coming to the same conclusion. I don't say that a husband may not make a donation *inter vivos* to his wife, but it would require to be very clearly done and cautiously gone about. I know no instance in which mere parol testimony that a husband gave a sum of money to his wife and said it was a donation, was effectual in law; and I can see great difficulty in coming to that conclusion. The money was in the power of the husband just as much after he gave it to his wife as before, and was as much his property; and unless that could be held to import a renunciation of his *jus mariti*, it would be difficult to say that it had any effect at all. I suggested to Mr Young whether he would maintain that the mere act of handing over the money imported a renunciation of the *jus mariti*, but he did not take that view at all. His view was that the *jus mariti* was not permanently excluded, but might be resumed again. I don't understand that. What the husband would have resumed, if he had resumed anything, would have simply been in this way, that he would have taken back a thing that belonged to himself. I know no case in which parol testimony has been held to establish a donation *inter vivos* in that way. I give no opinion against it, but it would require great deliberation before coming to that result. A man may make a donation to his wife by a proper deed, but there is a record of it, evident to all the world. I don't know that the mere handing over money to her is sufficient. We have not yet held that *donatio inter vivos*, even to a third party, can be proved by parol evidence alone. I don't say the principle does not go that length, but that it is not yet decided. I go entirely on this, that this is a donation *mortis causa*, and, if so, it was decided by *Morris* v. *Riddick* that that can be proved by parol testimony and delivery. I look on this as just such a case. If parol testimony be competent, I have no doubt here of its sufficiency. That is confirmed by everything that was done for 30 years. The delicacy of the case in that view is, that it involves two novelties. In the first place, we have decided that *donatio mortis causa* may be proved by parol testimony, but not until now that that may be by a husband to his wife. That is an important question, and I have considered it carefully. The difficulty is in holding that there can be delivery at all, but I think the husband and wife are sufficiently distinct persons in our law to admit of the application of the principle. In the second place, there is here no stipulation by the husband for re-

delivery to him in the event of his recovery, as there was in *Morris* v. *Riddick*. That also requires consideration; but I have come to the conclusion that that was implied. Having got over these difficulties, then the case comes under *Morris* v. *Riddick*. I have only one other observation to make as to the £3600. It is said that, as the wife was trustee under her husband's settlement, she must have got this as trustee. Supposing that to be held, I don't know that it would have made any difference in the result. It is admitted that she did give the principal sum in substantially the same way as if she had given it under her husband's settlement, and the only dispute could have been as to the annual income.

As to the £2000, I have nothing to add. I have no doubt that the Act 1696 does not apply to such a case.

The other point is too clear for argument.

LORD ARDMILLAN—I concur, and shall only add, that while I think the proof quite conclusive in this case—if it be competent—I am unable to see any sufficient ground for distinguishing the case of donation to a wife from donation to a son, except that every donation from a husband to a wife is revocable. If parol evidence would be competent in the case of a son, it is not incompetent in the case of a wife.

Agents—Crawford & Simson, W.S.; James Webster, S.S.C.; William Mitchell, S.S.C.; Murray, Beith & Murray, W.S.

Saturday, June 13.

SINCLAIR *v.* WEDDELL.

Mutual Contract—Lease—Obligation—Rei interventus—*Reparation.* An improbative agreement of lease, there being no *rei interventus, held* not binding.

Sinclair alleged that, in October 1866, the defender agreed to let certain premises to him for seven years, or at least for one year from Whitsunday 1867, at a fixed yearly rent. In January 1867 the pursuer asked and obtained from the defender a document in these terms;—

"*Woodend Farm, 28th January* 1867.

"It is agreed by David Sinclair and James Weddell, for the public-house in Bathgate, for seven years' lease, the public-house to be £18 pounds yearly, the flesh shop to be £6 yearly, and killing-house and stable £4 yearly.

(Initialed) "J. W.
(Signed) "JAMES WEDDELL.
"*Woodend.*"

the document being written by the defender Weddell. The pursuer now sought damages in consequence of the defender having failed to put him in possession of the premises at the term agreed on. After the action was raised the pursuer signed the document. The case was now reported on the adjustment of an issue, the defender contending that, as the only document founded on was neither holograph nor tested, and it was not alleged to have been followed by possession, no issue ought to be granted, and the action ought to be dismissed.

THOMS and REID for pursuer.

R. V. CAMPBELL for defender.

The following cases were cited:—*Sproul*, Hume, 920; *Muirhead*, M. 8444; *Fulton*, M. 8446; *Barron*, M. 8463; *Fowlie*, 6 Macph. 254.

LORD PRESIDENT—The facts of this case are sufficiently simple. There is a document which bears date 28th January 1867, and is in these terms [*reads*]. Now that expresses—certainly not in very correct form—a mutual contract of lease. If not, it has no meaning at all. That is written by the defender Weddell, and signed by him. There is no other signature on the document until this action is raised, and, after the action is raised, the other party named in the writing appended his signature. There is no allegation of *rei interventus*, or any facts and circumstances to support this writing. It is needless to say that the document, being holograph of Weddell, cannot be holograph of the other party, and therefore is not binding on the other party, and it makes no difference that that other party is the party seeking to enforce it, for a party is not entitled to enforce as a mutual agreement that by which he is not bound. The case clearly comes within the rule of *Sproul*. The writing there bore to be a missive of tack, and was subscribed by both parties, being written by one, and on that the action was raised. The Lord Ordinary, "in respect that the minute of tack libelled on is neither probative in terms of law, nor has been followed by possession, finds that the pursuer cannot insist for specific implement thereof," and assoilzied the defender from the conclusion of reduction; and to this part of the interlocutor the Court, on advising a petition and answer, adhered. It appears that the case was very deliberately argued, and it is impossible to read the judgment otherwise than as a judgment of authority. But if it were not, I see no doubt that the conclusion which it reached is sound. I think we must disallow this issue.

The other judges concurred.

THOMS contended that at least he was entitled to an issue putting the question of a lease for one year.

The Court allowed him to put in an issue, without deciding as to whether it would be allowed or not.

Agent for Pursuer—W. Officer, S.S.C.
Agent for Defender—A. Wylie, W.S.

Saturday, June 13.

SECOND DIVISION.

LACY, PETITIONER.

Petition—Access to Children. Circumstances in which the Court allowed a wife, against whom an action of divorce on the ground of adultery had been unsuccessfully maintained, and who was living separate from her husband, to have access to her children.

This is a petition for access to children, brought by a lady against whom an action of divorce on the ground of adultery was in dependence under a Reclaiming Note from the Lord Ordinary's interlocutor, which was to the following effect:—"*Edinburgh, 17th March* 1868.—The Lord Ordinary having heard counsel, and made avizandum, and considered the record, with the proof adduced, productions, and whole process, Finds that the pursuer has failed to prove the acts of adultery alleged on the record to have been committed by the defender Mrs Lacy, or any of the said acts;