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;