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;

and, with reference to the preceding finding, assoilzies the defenders respectively from the conclusions of the action, and decerns: Finds the pursuer liable to the defenders respectively in the expenses of process, of which allows an account to be lodged, and remits the same to the Auditor to tax and to report."

"*Note.*—The Lord Ordinary trusts he may be held as here absolved from the duty which, in the ordinary case, he endeavours to discharge, of stating in a note the views on which he has proceeded in giving judgment. The result of his consideration of the evidence which was led in his presence, and which has since formed the subject of able argument before him, is embraced in the terms of the preceding interlocutor."

The case standing No. 60 of the Long Roll of the Second Division, their Lordships, before disposing of the petition, gave the action of divorce precedence; and, on advising the reclaiming note in that case, they adhered to the interlocutor of the Lord Ordinary. The Court then took up the petition. The respondent, in answer, founded on alleged habits of intoxication of which the petitioner had been guilty, and to which she was still said to be addicted, and on familiarities with other men which were founded on in the action of divorce,—the proof of which consisted of some correspondence between the petitioner and a gentleman not her husband. The respondent also said that latterly, besides neglecting her other duties, she had been harsh to the children. The answers concluded as follows:—"It is humbly submitted, in these circumstances, that the petitioner is not a person with whom the respondent could safely allow his children to associate. Even although it were held, as the Lord Ordinary has held, that the evidence did not amount to proof of adultery, no wife could for years be addicted to habits of intoxication, as the petitioner was, and could receive and write such letters, without being morally debased. The respondent trusts that, although he was unable to convince the Lord Ordinary that the proof was sufficient to entitle him to decree of divorce, he will be able to convince your Lordships that it is so; but, even if he fail in that action, he has now said enough to justify him in not allowing to the petitioner access to the children. But still farther, this is not a case in which, where the action of divorce is *in pendente*, the Court should interfere with the right of the father to the custody and supervision of his children, upon whom any intercourse with their mother will have the most prejudicial and distressing effect."

Clark and Thomson for Petitioner.

Fraser and Lancaster for Respondent.

The Court pronounced the following interlocutor:—

"*Edinburgh*, 13*th June* 1868.—The Lords having resumed consideration of the petition, with the answers thereto, and heard counsel, Find that the petitioner is entitled to have access to her children, subject to regulation; and in the meantime, and subject to the further orders of the Court, direct and decern that an opportunity be given to the petitioner to see her children once every two months for the space of not exceeding four hours on each occasion, at such place and in presence of such party as may be mutually agreed on by the petitioner and the respondent: Failing such agreement, grant power to the Sheriff of Lanarkshire to fix a place of meeting, and to name a proper party in whose presence the interviews of the petitioner with her children shall take place; the first interview to take place at the end of two months from the date of this interlocutor: Find the petitioner entitled to the expenses of this application hitherto incurred, and remit to the Auditor to tax the same and to report: Further continues the case in the rolls, and decerns."

Agents for Petitioner—J. & R. D. Ross, W.S.

Agents for Respondent—Murray, Beith, & Murray, W.S.

Tuesday, May 16.

FIRST DIVISION.

CUNNINGHAM *v.* PHILLIPS.

Reparation—Slander—Newspaper—Issue. Form of issue in action of damages against a newspaper editor for publication of a continuous series of defamatory articles.

This was an action of damages for defamation at the instance of the Reverend John Cunningham of Crieff, against David Phillips, proprietor, publisher and editor of the *Strathearn Herald*. The issues as reported to the Inner-House by the Lord Ordinary were six in number; the first being:—

"(1) Whether in the number of the said newspaper published on or about 12th October 1867, the defender printed, published and circulated, or caused to be printed, published and circulated, an article entitled 'The Organ again,' and paragraph referred to the said article, both contained in schedule A. hereunto annexed; and whether said article and paragraph, or either of them, or part of them or either of them, were of and concerning the pursuer, and falsely and calumniously represented or insinuated that he, along with others, had solicited or procured the raising of a small-debt action in the Sheriff-court of Perthshire, at the instance of David Arnot, clerk and letter-writer in Crieff, against Alexander M'Nab, weaver there, for the purpose of eliciting something to remove the disgrace alleged by the defender to hang on the promoters of a movement for the introduction of on organ into the parish church of Crieff; and falsely and calumniously represented or insinuated that the pursuer had dismissed one of his best Sabbath school teachers without reason assigned, because he was opposed to the organ, and might object to its being played in the Sabbath school; or contains any one or more of the said false and calumnious representations or insinuations, or false and calumnious representations or insinuations of the same or similar import, to the loss, injury, and damage of the pursuer?"

The second issue was laid on an article of 26th October 1867, alleged to represent and insinuate that the pursuer and others had instituted the said action, and were endeavouring to destroy the reputation of their neighbours.

The third issue was laid on an article of 2d November 1867, alleged to represent or insinuate that the pursuer knowingly and wilfully instigated or abetted a lawless or rebellious act against the authority of the Church of Scotland.

The fourth issue was—

"Whether, in the number of the said newspaper published on or about 9th November 1867, the