The inhibition had been used on the dependence of an action of count and reckoning, which was conjoined with a counter-action. The conjoined actions were ultimately submitted to arbitration. The referee disposed of the reference by a finding for a small sum in favour of the petitioner; but each party was ordained to pay his own expenses. The case had been one of mixed success on the merits; and, in the circumstances, the Court refused the expenses of the judicial application, holding apparently that the respondents, although bound to discharge the inhibition, were not liable for the expense of the discharge.

The conclusion at which the reporter has arrived from his examination of these authorities is, that, except in cases where the use of diligence was to be regarded as nimious and oppressive, or at all events as improper, the expenses of discharging inhibitions has been thrown on the party requiring the discharge, and that beyond this no rule of general application has hitherto been adopted by the Court.

It is for the Court to determine as to the expediency of continuing to dispose of each case of the kind under consideration on its own special merits, or laying down a general rule as to the expense of discharging diligence used on the dependence of actions. The reporter has some hesitation in offering any remark on such a question, and he trusts that, in bringing under the notice of the Court the views which have occurred to him bearing upon it, he will not be regarded as transgressing his proper limits. The Act of Sederunt of 19th December 1835 contains a provision in those terms:—"In order that the expense of litigation may be kept within proper and reasonable bounds, it is hereby declared that in taxing accounts between party and party only such expenses shall be allowed as are absolutely necessary for conducting it in a proper manner, with due regard to economy." The effect of this rule as hitherto acted upon has been to lay upon parties successful in litigations a very considerable portion of the expenses incurred by them in conducting their cases; but, by prudent management, litigants have the amount of this burden to a considerable extent in their own power. The expense, however, which may be laid upon a litigant ultimately successful, during the course of an action, by the use of diligence on the dependence, is in a position altogether different. He cannot in any way control such expense, which in many instances forms a considerable addition to the expenses not recoverable by him from his opponent as expenses of process. It is for the consideration of the Court whether the use of diligence on the dependence of an action (while the issue is uncertain), should not be wholly at the risk of the party availing himself of the privilege which the law gives him for his security; and it humbly appears to the reporter that much uncertainty and expense would be saved to parties were it understood that, in ordinary cases, the expense of discharging diligence on the dependence of an action, in which the party using such diligence is wholly unsuccessful, must be borne by him, and not by the opposite party who has prevailed in the litigation.

Second. The reporter has already exhausted the remit made to him in so far as relating (whether generally or particularly) to the party by whom the expense of discharging the inhibition shall be borne. It only remains for him to report upon the question, "whether an extract of the decree *absolvitor* presented to the Keeper of the Register of Inhibitions will enable the defender to obtain the inhibition to be scored on the record.' On that point he has to report in the negative. The keeper of the record requires as his warrant a specific recall of the diligence either by the extrajudicial act of the party who used the diligence, or by a warrant of the Court; reference in either case being made to the inhibition by the date of its registration. It seems to be competent for the Court, when pronouncing *absolvitor*, to recal the diligence, and to grant warrant for scoring the inhibition on the record if moved to do so. In the present case no such motion was made. In the case of *Sheriff*, already referred to, the omission to move for a warrant in similar circumstances does not seem to have prevented the Court finding the petitioner entitled to expenses.

The reporter thinks it right to state that he has examined the discharge, No. 16 of process, which, from its date (June 13, 1867), appears to have been executed subsequent to the boxing of the petitioner's application to the Court. It discharges the inhibition, and also the arrestments used by the pursuer on the dependence, and authorises a marking to be made on the margin of the record; but the discharge is not, in the opinion of the reporter, duly stamped, being written on a receipt-stamp. Not being an acknowledgment for money, and containing a warrant of registration, it ought, he thinks, to have been impressed with the proper deed-stamp duty of 35s. It is, however, proper to explain that in practice the keeper of the record of inhibition receives and registers discharges written on receipt-stamps, not regarding it as his duty to consider the sufficiency of the stamp; and that a considerable number of the discharges presented to him for registration in his record are engrossed not on deed stamps but on receipt-stamps."

The report having been lodged, the respondents withdrew their opposition; and accordingly, in respect of no appearance, the Court recalled the inhibition with the expenses as craved.

Counsel for Petitioner—Mr Maclean. Agent—William Miller, S.S.C.

Counsel for Respondents—Mr Scott. Agent—W. Wotherspoon, S.S.C.

COURT OF TEINDS.

Wednesday, January 29.

MINISTER OF PENICUIK, PETITIONER.

Manse—Glebe—Petitioner—Glebe Lands Act. The proper party to present an application to the Court under the 17th section of the Glebe Lands (Scotland) Act 1866, is not the minister, but the party wishing to purchase the land.

The 17th section of the Glebe Lands (Scotland) Act 1866 provides that, when the Court has, by an order or interlocutor, granted authority to feu in terms of the Act, any conterminous proprietor may, within thirty days of that order, intimate his willingness to feu, lease, or purchase such part of the glebe, and at such feu-duty, rent, or price as the Court may authorise; and after the price, in the case of sale, is fixed, the Court shall pronounce a decree of sale in favour of the heritor, on which he shall be entitled to obtain a charter from the Crown;

the price, after deduction of expenses connected with the application, to be invested, and the interest paid to the minister. It appeared that the heritors of Penicuik, having had their attention called to the inadequate size of the churchyard, resolved to take steps for enlarging it, and intimated to the minister that they wished to acquire half an acre of the glebe immediately adjoining the churchyard wall, and they requested the minister to take the necessary steps for conveying to the heritors the specified piece of ground. The minister accordingly presented this minute to the Court, craving them to pronounce decree of sale in favour of the heritors.

NEAVES for the petitioner.

The Court were of opinion that the proper party to take the initiative in the matter was not the minister but the party or parties proposing to take the land, and the minute was accordingly withdrawn.

Agent for Petitioner—H. W. Cornillon, S.S.C.

COURT OF SESSION.

Thursday, January 30.

JURY TRIAL.

(Before Lord Barcaple and a Jury.)

PUGH *v.* OGILVY.

Reparation—Breach of Promise of Marriage.. Verdict for pursuer.

This was a case of breach of promise of marriage, damages in which were laid at £5000. The action was at the instance of Miss Fanny Pugh, residing at the North-Western Hotel, Stafford; and the defender was the Hon. William Henry Bruce Ogilvy, presently residing at Cowden House, in the parish of Muckhart, and county of Perth.

The pursuer, in her condescendence, alleged that she is twenty-seven years of age, and is the daughter of the late Benjamin Pugh, of Treberth, in the county of Pembroke, gentleman farmer; that the defender, who is of the same age as the pursuer, is proprietor of the estate of Cowden, in the parish of Muckhart, in Perthshire, an estate yielding a yearly rental of about £1066; and that, in the year 1865, the pursuer was managing the Crewe Arms Hotel, at Crewe, in the county of Chester. The pursuer also made the following statements:—"In August of that year, the defender stayed at the hotel for some days, and then made the acquaintance of the pursuer. He returned in the following October, and remained for some time, during which period he paid his addresses to the pursuer, professing to do so with the object of making her his wife. On the 15th of that month he made her a formal offer of marriage, which she, after taking some time for consideration, and the defender continuing to press his suit, accepted. The defender thereupon entered into an explanation of his position and property to the pursuer, and promised to settle upon her the provision set forth in the note of instructions narrated in the following article. The terms of the settlement were frequently discussed by the defender, who asked the pursuer to name her own attorney, and a trustee to act on her behalf, in order that the contract might be at once drawn out. Accordingly, the pursuer named John Broughall, Esq., solicitor, Shrewsbury, as her attorney, with whom she asked the defender to communicate with reference to their marriage settlements. The defender did so, and dictated to Mr Broughall the following note of instructions, to prepare the necessary deeds:—"£5000, the interest to be settled on Miss Pugh for her life, then to the children equally. If husband survives wife, then to husband for life. If Miss Pugh survives, she to have the power of leaving £2500 as she thinks proper, and the remaining £2500 to husband's next of kin. About £14,000 on mortgage on the estate in the parish of Muckhart, in the county of Perth. The value of the estate is between £35,000 and £40,000.—M'Kenzie & Kermack, W.S., 9 Hill Street, Edinburgh." Edward Jeffreys of Lightcliff, in the county of York, engineer, and Edward Halsey of Alderley Edge, in the county of Chester, hotel proprietor, were fixed upon by both parties as trustees; and Mr Broughall, on the instructions of the defender, prepared a draft marriage settlement in the following terms, as agreed on by the parties.—The defender to convey his property in the parish of Muckhart, subject to the charges thereon, to the above-mentioned trustees on trust, to raise by sale or mortgage £5000, the interest of which was to be paid to the intended wife for her separate use for her life, and after her decease to the intended husband for his life, and after his decease the principal to be divided between the children of the marriage equally. If no children, one moiety of the principal to go to the next of kin of the intended husband, the other moiety to the next of kin of the intended wife, or to such person as she might bequeath the same to by her will. On Oct. 22, the defender wrote the following letter to Mr Halsey, of the Crewe Arms Hotel, in whose employment, as manager, the pursuer then was:—

"October 22, 1865.

Sir,—I believe you have been aware for the last week that I am going to be married to Miss Pugh and I now write to hope that, under the circumstances, you will be able to dispense with her services under the usual month's warning, as but for her engagement the affair would probably come off within the next fortnight.—Believe me, yours truly,

W. H. BRUCE OGILVY."

The defender represented to several other persons that he was engaged to be married to the pursuer. The defender, at a later date, wrote to Mr Halsey and Mr Broughall that he was afraid that a serious obstacle would prevent the marriage taking place. The pretended obstacle was, that the defender represented that he had been previously married to some lady in Scotland. He about the same time wrote to the pursuer, apparently with the view of breaking off the marriage. The defender subsequently, in a letter to the pursuer of 8th November, admitted that this story of a previous Scotch marriage was utterly untrue. About the 19th November the defender visited the pursuer at Crewe, and it was then arranged that the marriage should take place, if possible, on the then following Thursday; and on the 20th of that month the defender wrote and sent Mr Broughall a letter, in which the following passage occurs:—

"Crewe Arms Hotel, November 20, 1865.

My Dear Sir,—Will you kindly come here on Thursday with the deed of settlement, as the marriage is to be on that day, and I want to go to Carlisle that night."

On 11th November, Mr Broughall forwarded to