

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in the matter was not the minister but the party or parties proposing to take the land, and the minute was accordingly withdrawn.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 Barcaille 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 condescence, 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

the defender the draft settlement prepared by him in the terms above set forth; and on 25th November Mr Broughall wrote to the defender to return it revised. To this letter the defender, on the 27th of the same month, replied as follows:—

“Kennedy’s Hotel, Princes Street, Edinburgh,  
November, 27, 1865.

Dear Sir,—Wishing to be off my engagement to Miss Pugh, I have asked her what sum she will accept as compensation. I await her answer; in the meantime I shall retain the deeds.—Believe me, yours truly,  
W. H. Bruce Ogilvy.”

And on the same day he wrote to the pursuer as follows:—

“Kennedy’s Hotel, Princes Street, Edinburgh.

My dear Miss Pugh,—I hope shortly to have your answer to my question of the other night.—Believe me, yours truly,  
W. H. Bruce Ogilvy.”

The pursuer was very much astonished and indignant at receiving this letter, and handed it over to her agent, who, on the 9th December following, wrote the defender as follows:—

“Shrewsbury, December 9, 1866.

Sir,—Yourself and Miss Pugh.—Miss Pugh has handed me your last letter, to which she can hardly be expected to reply. I will thank you to return the draft settlements, and let me know the name of your attorney.—I am, Sir, your obed. ser.,  
JOHN BROUGHALL.

The Hon. W. H. Bruce Ogilvy.”

The defender has since been frequently communicated with on behalf of the pursuer, but has persisted in his determination to break off the marriage, and has made no reply to the communications addressed to him, nor made any reparation for the injury done to the pursuer. On 4th April 1866, the defender was married in Birmingham to Sarah Boyden, daughter of the late Henry Boyden, of that town, pew opener at the Jewish Synagogue. The pursuer, in consequence of her engagement to the defender, left the situation which she held as manager at the Crewe Arms Hotel, and was otherwise put to considerable expense in anticipation of her marriage. By the defender’s breach of his promise and engagement to marry her, the pursuer has been grossly and wantonly injured in her feelings and prospects in life, and has suffered great loss, injury, and damage. The sum of £5000 is, in the circumstances, a fair and reasonable sum as damages and *solatium* to the pursuer.

The defender, in his condescence, admitted that he made the acquaintance of the pursuer, then house-keeper at the Crewe Arms Hotel, in the month of October 1865, and that he then made an offer of marriage which she accepted, but he explained that this was on the third day after the defender’s arrival at the hotel in October, and that the defender had not previously any acquaintance with the pursuer. He also admitted that the pursuer employed Mr Broughall, of Shrewsbury, to obtain from the defender a statement of his means, and of the settlements he could make on marriage. He admitted also that he gave information on that subject to the lawyer employed by the pursuer, and gave him the name and address of his agents, but he said that nothing was known, and he made no admission as to the alleged note of instructions, or as to the alleged draft marriage settlement. He also explained that the pursuer and her attorney did not communicate with Messrs M’Kenzie, & Ker-

mack as to any settlements, and did not inform them of what is said to have been arranged. The defender also made the following statements:—The defender’s marriage is admitted. His letters are referred to for their terms. Denied that the breaking-off of the proposed marriage has caused any injury or damage to the pursuer, either in her feelings or otherwise. Explained and averred that before 24th October 1865, the defender had made the pursuer aware of his unwillingness to marry her; that two letters were both written upon that date to the pursuer’s attorney. That on 2d November 1865, the defender wrote to the pursuer from Liverpool a letter, earnestly advising her to reconsider matters, assuring that she would not be happy, and plainly informing her that he wished to be off, but would marry her sooner than face an action for breach of promise. On the 8th November 1865, no answer having been sent to that letter, the defender again wrote from Liverpool to the pursuer a letter, requesting her to inform him whether or not she intended keeping him at his promise. Subsequently, on 27th November 1865, the defender wrote from Edinburgh to the pursuer’s attorney a letter stating that, wishing to be off his engagement to the pursuer, he had asked her what sum she would accept as compensation, and that he awaited her answer. On or about the same day the defender wrote to the pursuer from Edinburgh the letter also quoted in the condescence. All these letters were duly received. From the time when he wrote these letters, down to a recent date, at all events down to a period considerably after his marriage, the defender heard nothing of or from the pursuer or her solicitor, and he understood that she had relinquished, and in fact she did relinquish, all claim upon the defender.

The issue for the pursuer was as follows:—

“Whether, in the months of October or November 1865, the defender promised and agreed to marry the pursuer; and whether the defender has wrongfully failed to perform the said promise and agreement, to the loss, injury, and damage of the pursuer?”

The damages were laid at £5000.

PATERSON opened for pursuer.

Evidence was led.

LEE opened for defender.

Evidence was led.

DEAN OF FACULTY (MONCREIFF) addressed the Jury for the pursuer.

CLARK addressed the Jury for the defender.

LORD BARCAPLE, in summing up the evidence, remarked that the law did not allow a solemn marriage-contract to be broken without treating it as of that species of engagement the breach of which involved damages. The damage might be more or less, according to the circumstances; but wrong had been done, and damage to some extent must result. This case was in many respects peculiar, and it would be necessary for the jury to look to all the circumstances. Comment had been made on the long delay that elapsed before the action was taken; but he had no doubt that the desire of the pursuer to have an English trial, as she belonged to England, and the witnesses were there, had a great deal to do with the delay; but he did not know if this was one of the material matters. There was also this peculiarity about the case, that the pursuer was a person in a very different rank of life from the defender, though she was a person most

honourably engaged in a situation of great trust, and also of great importance, both to the employers of such persons and to the public. Still she was in a situation in which it was necessary for her to earn her livelihood; and if this marriage had been accomplished, it would have placed her in a very different position in that respect, in so far as she was to receive a settlement which would have made her at all events an independent person, and that whether she survived her husband or not. He could not say that this was a matter to be thrown out of view, because there was a difference in a marriage of this sort and one that would reduce the person to poverty. There was, further, this peculiarity, that the defender informed the pursuer at a comparatively early period that he wished to be off. This, too, was not a matter that the jury could overlook. But then, on the other hand, it was for them to bear in mind that although the communication proposing to be off, and telling her in vague terms that he had felt no love towards her, came comparatively early, it still came after the arrangements had been made known to the lady's friends, and after the injury had been done. The defender did not say, "I will marry you immediately if you will marry me before the register without waiting for a contract, but I won't wait for a contract and marry you then." He made suggestions, but he did not say he would do nothing else. He took away the draft contract on the understanding that he was to get it adjusted, and that the marriage was to go on on the original footing. Passing on, it was impossible to shut out from their view that the engagement took place after the very shortest possible period. That had a great deal to do, on the one hand, with the question of injured affections, which could not be supposed to exist to such a degree under such circumstances, as in a case where such an engagement comes on more gradually. Still there was damage, because there was that injury to the feelings which must necessarily take place by an engagement when broken, short or long. There was great disparity of condition between these two persons, though there was no disparity of age. His observation of human life had led him to the conclusion that matches with great disparity of condition were very apt to turn out not so happily as when the parties were induced to marry by their natural feelings; and a woman marrying into a position above her own is often unfortunately preventing that happiness and independence, and sometimes respect, that she might have acquired had she married into her own humbler condition of life. The prudence of the arrangement was a question for the jury, as far as they had evidence about it. It was an exceedingly imprudent arrangement on the part of the man, and not one likely to be productive of much happiness or comfort. This was no excuse for what he did—for first making the engagement, and then breaking it; but it was one of the many things for a jury to take into consideration. There was also the fact of the second marriage taking place so shortly after this engagement. He did not think this was a case in which the jury could give anything less than most substantial damages. There was a wrong done—a substantial wrong; but, on the other hand, there were the circumstances both of the way in which the thing came about, and the possible crossing of happiness which such a marriage might have had. His Lordship concluded by informing the jury that a unanimous verdict was necessary.

After an absence of twenty-five minutes, the

jury returned a unanimous verdict for the pursuer—damages, £1200.

Agents for Pursuer—J. & A. Peddie, W.S., instructed by Mr W. Edwards-Wood, of Tamworth Castle and Birmingham, Solicitor.

Agents for Defenders—M'Kenzie & Kermack, W.S.

Friday, January 31.

## FIRST DIVISION.

### EARL OF ZETLAND *v.* GLOVER INCORPORATION OF PERTH.

*Salmon-Fishing—Channel of River—Medium Filum—Bank formed in channel of river by accumulation of mud.* A bank formed in a river by accumulation of sand and mud was gradually, within 40 years, carried down the channel by the action of the river, until it lay between the properties of B. and S. At high water it was covered, but at low water it was visible, part lying on each side of the *medium filum* of the stream. *Held*, that the bank, not being a permanent formation of the nature of an island, but being truly a portion of the bed of the river, its existence did not affect the rights of the owners of the properties on either side of the channel to fish for salmon from their respective banks *ad medium filum*.

The Earl of Zetland, proprietor of the lands of Balmbreich, in the county of Fife, and lying on the south side of the estuary of the Tay, brought this action against the Glover Incorporation of Perth, proprietors of the estate of Seaside, in the county of Perth, and lying on the north side of the estuary, opposite to Balmbreich, concluding to have it found "that the pursuer has good and undoubted right to fish for salmon and other fish in the river Tay *ex adverso* of those portions of the lands and barony of Ballinbreich or Balmbreich belonging to him, and known as the estate of Balmbreich, and that as far as the centre of the stream of the said river, and including the right to fish as aforesaid from and upon the bank called the Balmbreich Bank, or 'Eppies Taes' Bank, lying opposite to the pursuer's said estate: And it ought and should be found and declared that the defenders and their successors in the lands and estate of Seaside have no right or title to fish for salmon or other fish to the south of the centre of the stream of the said river, and in particular from or upon any part of the said bank: And farther the defenders ought and should be prohibited and interdicted from molesting or interfering with the pursuer in the exercise of his said rights, and particularly from fishing by themselves, their tenants or others, from or upon any part of the said bank."

The estuary, between the properties of Balmbreich and Seaside, is about a mile and a half or a mile and three quarters broad at high water. The pursuer alleged that the stream of the river, on reaching the said bank, divided into two channels, one flowing on the north, and the other on the south side of the bank; the bank was about a mile and a half from the defender's lands, and within a quarter of a mile from the pursuer's; nearly the whole body of the water ran in the channel north of the bank; the bank was situated entirely to the south of the centre of the river, and the pursuer had the exclusive right to fish for salmon thereupon.