a man goes about recklessly spreading defamatory reports regarding another which are not true he will be responsible for such statements. But we have not such a case here. The defender was asked by Mr Muir if he could inform him or could find out who had been poaching his rabbits, a matter in which Mr Muir was interested. The defender did make inquiry of a person who was likely to be able to afford the desired information, and he got an answer which he communicated to Mr Muir. I think the evidence shows that what Thompson the gamekeeper told the defender was that the pursuer was poaching. The defender privately communicated to Mr Muir what he had heard from Thomson, and that communication was, I think, privileged.

It is said that the defender repeated as a fact of which he had knowledge what he got from Thompson as mere hearsay or rumour. I do not think he did, but if he had made a statement to Muir which was somewhat incautiously worded in view of all the information he had got, it would not have altered my judgment. I think in the circumstances the defender was privileged in making the statement he made to the person to whom he made it. If there was privilege, then malice, which is necessarily the basis of an action of slander, and in the ordinary case is presumed, must be proved. Here I think the idea of malice is not only not supported by the evidence but is rebutted by it. The defender was not acting recklessly, and there is no ground whatever for supposing that he was actuated by any personal ill-will against the pursuer.

I think it fair to the pursuer to add that there is no room, in my opinion, on the evidence before us, for believing that the pursuer was a poacher, nor any reason for suspecting him of poaching.

I concur in thinking that the Sheriff-Substitute's judgment should be recalled and the defender assoilzied.

LORD MONCREIFF was absent.

The Court pronounced the following interlocutor:—

"Sustain the appeal and recal the interlocutor appealed against: Find in fact (1) that the pursuer is the farm manager to his brothers, who are postmasters and merchants at Eaglesfield, and that defender is an hotel-keeper, carrying on business at the Irving Arms Hotel, Kirtlebridge; (2) that Mr William Clark Muir, tenant of the estate of Blackwoodhouse, had complained to the defender about poaching taking place on said estate, and that defender promised to assist him in finding out who the parties were; (3) that the defender received a communication from John Thompson, gamekeeper, Birnam Cottage, that he had been told who had been poaching on said estate, and that pursuer and another were the parties who had done so, and that defender told Mr Muir what had been communicated to him by said John Thompson, and gave him the name of his informant; (4) that said statement of and concerning the pursuer was false and calumnious, but that under the circumstances the defender in making said statement was privileged: Therefore assoilzie him from the conclusions of the action, and decern: Find him entitled to expenses in this and in the Inferior Court," &c.

Counsel for the Pursuer and Respondent — D. Anderson. Agent — James A. B. Horn, S.S.C.

Counsel for the Defender and Appellant —Hunter. Agent—Thomas M. Horsburgh, S.S.C.

Saturday, July 10.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

HENRY *v.* STRACHAN & SPENCE.

Proof — Bankruptcy — Agent and Client — Proof of Accession by Creditor to Composition Arrangement.

Accession to a composition arrangement by a bankrupt with his creditors may be proved by the writ of an agent duly authorised to act for a creditor.

Miss Mary Elizabeth Henry, 1 Roslin Terrace, Aberdeen, raised an action in the Sheriff Court at Aberdeen against Messrs Strachan & Spence, Accountants, Aberdeen, concluding, *inter alia*, for payment of the sum of £634, being the amount paid by her to the North of Scotland Bank under a letter of guarantee granted by her to the bank for payment of all sums advanced by the bank to the defenders, and for payment of the expenses incurred by her in defending an action brought by the bank against her in respect of this sum; and, lastly, for payment of £1100 contained in a promissory-note granted to her by the defenders.

It appeared that the defenders were in the habit of managing the pursuer's money matters, and that in 1892 Mr Strachan induced her to sign the guarantee in question; that in 1893 they collected moneys belonging to her amounting to £1100, for which, as a convenience to the firm, she accepted a promissory-note.

In 1894 the defenders became insolvent, and entered into negotiations with their creditors, including the pursuer, with a view to a composition-arrangement. After sundry negotiations, on 13th April Messrs Morice & Wilson, who were acting for the pursuer, wrote to the defenders' agents, Messrs Edmonds & Ledingham, in the following terms:—"We have now had an interview with Miss Henry as to Messrs Strachan & Spence's affairs, and she has authorised us to agree to the terms proposed by you, provided her expenses are paid." . . .

The pursuer thereafter refused to sign the necessary documents, and having unsuccessfully defended an action brought

against her by the bank for payment of the sum contained in her guarantee, she raised the present action.

The pursuer pleaded with regard to the composition-arrangement — "(5) The defenders' statements can only be proved by writ or oath. (6) The defences, so far as founded on the alleged composition settlement, should be repelled—(1st) In respect the pursuer never accepted said settlement, either directly or through her agent; (2nd) that any acceptance thereof given by Messrs Morice & Wilson was unauthorised by and is not binding on the pursuer." . . .

The defender pleaded — "(6) In respect that the pursuer agreed to the composition arrangement made by the defenders, and that there has been no failure on their part in carrying through the arrangement, the defenders should be assoilzied."

The Sheriff-Substitute, after a proof had been led, found in fact, *inter alia*, that the pursuer had "authorised Mr Wilson (her agent) to agree to this composition on her behalf, which he accordingly did by letter to Messrs Edmonds & Ledingham"; and found in law—"(1) That pursuer is bound to concur in said composition arrangement, having agreed to do so through her duly authorised agent." He decided in favour of the defenders with regard to the other points raised in the case, and accordingly dismissed the action.

The pursuer appealed, and argued — Assuming that the appellant's agent was authorised to accept the composition, the abandonment of a right such as was contained in an agreement to accept a composition must be proved by the writ of a party himself, and the letter of an agent was not enough to bind the principal — Bell's Commentaries, ii. 393 and 398; *M'Gregor* v. *M'Gregor*, June 27, 1860, 22 D. 1264, at page 1268.

Argued for the respondents—The writ of an agent, his mandate being good, as it had been proved to be in this case, was sufficient to bind his principal in a composition arrangement—Bell's Commentaries (*supra*); *Glass* v. *M'Intosh*, May 12, 1825, 4 S. 1. The writ here was required only for the proof of the creditor's accession, not for the constitution of the agreement, and accordingly no special formalities were required.

At advising —

LORD M'LAREN — [*After reviewing the evidence, upon which his Lordship concurred with the Sheriff-Substitute in holding that the pursuer had authorised her agent to accede to the composition arrangement, his Lordship proceeded*] — The only other point in the case is the appellant's plea that accession to the composition agreement can only be proved by writ or oath.

Now, it is a general rule that where writ is required for the proof of an agreement, as distinguished from its constitution, a letter signed by the party or his agent is sufficient. There may be exceptions, but this is not one of them. Accession to a trust or composition agreement is a matter of fact, and no obligatory writing or other formality is necessary to bind the creditor. According to universal practice, the creditor's signature is sufficient evidence of his accession, and where he is represented by an agent, the agent's signature is as good as that of the principal. Assuming that Mr Wilson had his client's authority, which for the reasons stated I hold to have been given, Mr Wilson's letter to Mr Ledingham is in my opinion sufficient to bind the appellant.

No other points were pressed in argument, and my opinion is that we should adhere to the judgment of the Sheriff-Substitute, dismissing the action with expenses in the Sheriff Court.

The LORD PRESIDENT, LORD ADAM, and LORD KINNEAR concurred.

The Court adhered to the judgment of the Sheriff-Substitute, and dismissed the action.

Counsel for the Pursuer—Watt. Agent—Andrew Urquhart, S.S.C.

Counsel for the Defenders—H. Johnston—W. Brown. Agent—Alexander Morison, S.S.C.

Saturday, July 10.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

JOHNSTON *v.* WALKER TRUSTEES.

Superior and Vassal—Building Restrictions — Title of Co-Feuars to Enforce Restrictions—Mutuality.

A clause of restriction common to all feu-charters granted by a superior in a certain street, restricted the feuar from converting the house thereby disponed into a shop, and bound him to use it as a dwelling-house only. Each feu-charter commenced with a reference to "the plan and elevation adopted for" certain streets, and set out as the reason for the restriction that the tenement which was already built on the area feued "has been erected in strict conformity to" that plan and elevation. Each title also contained provisions relative to a pleasure ground in front of the subjects, and to the formation and maintenance of the sewers, inferring community of interest and obligation among the feuars with regard thereto. Each title also contained a clause providing that the superiors should have power to vary or alter any of the proposed plans and streets and lanes upon the ground belonging to them which was not built upon at the time of granting the respective feu rights. They contained no special stipulation that the restriction to which each feuar was to submit was to be imposed on