in which the editor speaks for himself, but that the position is that the editor accepts the whole liability of the anonymous author—every liability that can be brought against him if he had been disclosed. Therefore the real question is, whether there is any necessity for the pursuer putting malice into his issue, the action being one against a person occupying the same position as the anonymous author himself. Suppose this letter had been signed, there might then have been a question whether the person who wrote the letter had any right to deal with this subject at all, or to concern himself about it, or speak or write about it. All that could have been open for inquiry, but we are precluded from all inquiry into that because the name of the writer is suppressed. We cannot ascertain what interest the writer of the letter had in the matter he was discussing, nor can we say whether he was a ratepayer in Wick, was ever in Wick, or was even a British subject—indeed, he is a mere *umbra*. But he was somebody, and that somebody has libelled the pursuer, and is not in a position to justify that libel, and is not in a position to say that he has individually any sort of protection or privilege in the matter. That seems to me to be the conclusion of the whole question. If it is pleaded in point of law that when the editor of a newspaper rather than disclose the name of an anonymous contributor chooses to defend him in his own person, he is thereby entitled to maintain that what has been done is the same thing as if the attack had been contained in a leading article, then, I say, that is an entire mistake in point of law. When a newspaper editor or publisher declines to disclose the name of an anonymous contributor he puts himself in the position of saying, "We must submit to everything you can possibly bring against us in the way of liability, as if this had been a letter written, not in the newspaper at all, but written by one of ourselves, and printed in a separate form, and posted on the walls of the town." That is to say, the proprietor and the editor can be in no better position in this question than the anonymous author. The anonymous author is the person who is primarily liable, and if this article which was written by him was written by him maliciously, it is conceded on the part of the defenders that would subject the newspaper in damages; but how is it possible to prove malice on the part of a person one does not know? How can it be proved that the person who signed the letter was actuated by malice, or how can anybody prove the reverse? Yet that is one of the questions proposed to be put before a jury. On the whole matter, I have come to the conclusion that in the case of an anonymous letter there is no necessity for the pursuer proving malice.

Lord Mure concurred.

Lord Shand—If this question had arisen out of an editorial article, or out of an article or letter commenting upon the public life and character of the pursuer, I should have had more difficulty with the case, but in the special circumstances I think with your Lordship that malice should not be inserted in this issue.

We know nothing about the writer of this letter, whether he has any real interest in the burgh, or indeed whether he is even a resident in it. The editor of the paper refuses to surrender the name, and in these circumstances he must undertake all the responsibility.

We must take it, therefore, that this letter is not written by one who is a ratepayer, or who has any interest whatever in the prosperity of the burgh. In such a case malice does not require to be inserted in the issue.

Lord Adam concurred.

The Court refused the reclaiming-note and the motion to vary the issue.

Counsel for Pursuer—Rhind—Young. Agent—William Gunn, S.S.C.

Counsel for Defender—R. Johnstone—M'Lennan. Agent—John Macpherson, W.S.

Saturday, May 30.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

STIVEN *v.* FLEMING.

Process—Expenses—Bankrupt—Caution for Expenses where Fraud Alleged—Reduction.

In an action of reduction of a disposision on the ground of fraud, the Lord Ordinary, in respect of the bankrupt defender's failure to find caution for expenses, decerned against him conform to the reductive conclusions of the libel. His trustee did not appear in the action. On a reclaiming-note for the defender the Court *recalled* this interlocutor, and found (following *Buchanan* v. *Stevenson*, Dec. 7, 1880, 8 R. 220) that the general rule in such cases was that a defender was not obliged to find caution for expenses of process, and that here the bankrupt's character being assailed, the rule should be applied.

Counsel for Pursuer—J. P. B. Robertson—Law. Agents—Rhind, Lindsay, & Wallace, W.S.

Counsel for Defender—Nevay. Agent—R. Broatch, L.A.

Tuesday, May 26.

OUTER HOUSE.

[Lord M'Laren, Ordinary.

ROGERSON AND OTHERS *v.* CROSBIE (ROGERSON'S TRUSTEE).

Process — Expenses — Caution for Expenses — Bankrupt— Voluntary Assignation—Reduction.

A bankrupt who had granted a voluntary assignation in favour of his trustee of the rents of certain lands which he was entitled to receive under his father's trust-disposition and settlement, sued his trustee for reduction of the said assignation, on the ground

that under his father's will he had no power to make such a conveyance. *Held* that he was entitled to sue the action without finding caution for expenses.

On 27th July 1864, John Rogerson, who possessed considerable landed property in Wamphray, Dumfriesshire, died leaving a trust-disposition and settlement dated 7th December 1859. By this trust-disposition and settlement he left certain lands to his trustees, for the purpose of receiving the rents thereof and dividing them equally between two of his sons. He also declared that neither of his sons should have power to sell the lands or to burden them with debt, nor should the lands or rents be attachable by creditors, nor should his sons have power to assign the rents or produce of the lands except by way of provision in a marriage-contract. In 1878 the affairs of John Kirkpatrick Rogerson, second son of the truster, and one of the sons between whom the said rents were to be divided, became embarrassed and his estates were sequestrated. John Rorrison was appointed trustee in the sequestration. Shortly after the sequestration—a difference having arisen as to whether the interest of Rogerson in his father's estate fell under the sequestration — Rogerson executed an assignation in favour of Rorrison as trustee, whereby he assigned to him all the rents and sums of money that might become payable to him out of the lands left for that purpose by his father's trust-disposition. The trustee allowed the bankrupt an alimentary provision, and applied the surplus income to the reduction of his debts.

Rogerson and his wife and children raised this action for reduction of the assignation to his trustee, on the ground that it was *ultra vires* of him to grant such an assignation, and in contravention of the trust-disposition and settlement under which he had acquired right to the rents as an alimentary provision.

The trustee on the sequestration lodged defences and pleaded—"(2) The pursuer Joseph Kirkpatrick Rogerson being an undischarged bankrupt, ought to be ordained to find caution for expenses."

Argued for pursuer—The question of caution is one within the discretion of the Court. In the case of an undischarged bankrupt caution is not always necessary, and the circumstances of this case were exceptional. The action was against the trustee, to reduce the conveyance to the pursuers' funds—*Ritchie* v. *M'Intosh*, June 2, 1881, 8 R. 747.

The Lord Ordinary refused to order the pursuer to find caution.

"*Note.*—If this had been the case of an undischarged bankrupt suing the trustee in his sequestration, on the ground that a surplus remained out of his estate after his debts had been paid, I should have ordered him to find caution, because I could not give any sanction to a custom which would enable any bankrupt to put pressure on his trustee. But here although the pursuer has been sequestrated, that does not seem to have been considered enough to put the trustee in possession of his estate, and the trustee has accordingly come into possession of the bankrupt's property by a voluntary assignation. I think that I have sufficient authority to enable me to dispense with caution, and I do so the more readily on the ground that there is here at least one other pursuer who might be made liable in expenses."

Counsel for Pursuer — Salvesen. Agent — Thomas M'Naught, S.S.C.

Counsel for Defender—T. Rutherfurd Clark. Agent—Robert Broatch, L.A.

Tuesday, June 2.

FIRST DIVISION.

[Court of Exchequer.

MACLEOD *v.* INLAND REVENUE.

Revenue—Stamp Act 1870 (33 *and* 34 *Vict. cap.* 97), *secs.* 70, 71—*Conveyance or Transfer other than a Conveyance or Transfer on Sale—Dissolution of Partnership—Conveyance of Partnership Estate.*

On a dissolution of partnership an instrument was executed by the two partners whereby, after narrating the agreement for dissolution, the whole assets of the company were assigned to the continuing partner, with one exception, in consideration of the payment to the retiring partner of the sum of £8931, 10s. 5d., being his full share and interest as a partner in the assets of the company. The exception from the conveyance to the continuing partner was a bond and disposition in security for £8000 granted in favour of the firm, which was of even date assigned to the retiring partner, and, together with a payment in cash of £931, 10s. 5d., made up the foresaid sum of £8931, 10s. 5d. *Held* that the instrument was liable to the stamp-duty chargeable on a conveyance or transfer other than a conveyance or transfer on sale, and was not liable to the *ad valorem* stamp-duty chargeable on a conveyance or transfer on sale.

This was a Case stated by the Commissioners of Inland Revenue under the Stamp Act 1870 (33 and 34 Vict. cap. 97) at the request of William MacLeod to enable him to appeal to the Court of Exchequer.

The facts out of which the present question arose were as follows:—William MacLeod and John Wilson were the individual partners of the firm of William MacLeod & Company, metal merchants, Glasgow, and had carried on business for some time in partnership. In March 1884 they came to an agreement, which was embodied in an instrument titled an assignation dated 14th October 1884. This instrument was granted by William MacLeod & Company, metal merchants, founders' factors, and contractors in Glasgow, and William MacLeod, metal merchant, founders' factor, and contractor in Glasgow, and John Wilson, malleable iron tube manufacturer, Glasgow, the individual partners of the said company of William MacLeod & Company, not only as partners, but as trustees for their company, at the request and with the special advice and consent of the said John Wilson, as a partner and as an individual, and the said John Wilson for his own whole right and interest as partner, trustee, and as an individual, and they all of joint consent and assent.

The consideration upon which the instrument was granted was that "the said William MacLeod