fender in a criminal trial that he had committed the assault in question was competent evidence against him.

In this case James Caird, hotel keeper, Cullen, was pursuer; and Alexander Innes, Excise officer, Cullen, was defender; and the issue sent to trial was as follows:—

"Whether, on or about the 18th day of October 1865, and at a place on or near the turnpike road leading from Cullen to Portsoy, about 100 yards on the north side of the Cullen toll-bar, the defender assaulted the pursuer—to his loss, injury, and damage?

"Damages laid at £500."

At the trial,

SHAND and THOMSON for the pursuer proposed to put in evidence, for the admission which it contained, a conviction obtained against the defender on his own confession on 10th November 1865 when he was tried criminally for the assault in question before the Sheriff of Banffshire.

CLARK and LANCASTER for the defender objected to the competency of the proposed evidence. The conviction applied to the defender, but he had pleaded guilty as the quietest way of avoiding the publicity of a criminal trial. It had been decided that a prisoner's declaration could not be used against him as evidence in a civil case (Little *v.* Smith, 9 D. 737). A conviction obtained after a trial on a plea of not guilty would not be admissible as evidence; and there is no real difference in the case of a conviction obtained on a person's confession.

The pursuer cited the following authorities in support of the admissibility of the evidence:—Taylor on Evidence, S. 1506; Starkie on Evidence, p. 362; Dickson on Evidence, S. 1085; Bell's Principles, S. 2216; Grierson, M. 14,021; Bontein, M. 14,043; Lord Arran, M. 14,023; Mackie, 3 Murray 25; Cairns, 12 D. 921; Ivory's Ersk., p. 986, note 95.

Lord KINLOCH admitted the evidence, and the defender excepted.

The jury found for the pursuer—damages, £40.

Agent for Pursuer—Alex. Morison, S.S.C.

Agents for Defender—H. & A. Inglis, W.S.

Thursday, June 21.

FIRST DIVISION.

M'KINNON *v.* HAMILTON.

Diligence—Poinding—Suspension. Note of suspension of a poinding passed on the ground that the amount of effects poinded was excessive: *Question*—Whether it is necessary in a warrant of sale under a poinding to name the hour of sale.

This was a suspension of a poinding and warrant of sale granted by the Sheriff of Buteshire. The grounds of suspension were, *inter alia*, that the warrant of sale did not specify the hour as well as the day on which the sale was to take place, and that the respondent had poinded and had obtained warrant to sell all the complainer's moveable property, the appraised value of which was £72, 9s., for a debt the amount of which was only £13. The complainer offered consignation.

The Lord Ordinary (Mure) passed the note, and continued an interim interdict which had been granted. He observed in his note—"The poinding of effects of an appraised value upwards of five times the amount of the debt sought to be recovered is, in the opinion of the Lord Ordinary, of itself a very questionable proceeding. And when that is followed by a warrant of sale, in which no restriction is imposed upon the creditor as to the quantity of the effects which may be sold, and no precise time of sale is fixed—inasmuch as the hour of sale is left in the creditor's discretion—(Bell Com. on Statute, p. 22)—it appears to the Lord Ordinary that so much doubt is raised as to the legality of the diligence in the present case as to entitle the complainer to have the note passed upon the consignation offered being made. Kewley, March 8, 1843."

The respondent reclaimed.

BURNET for him argued—The Personal Diligence Act only requires that the time of sale should be fixed by the Sheriff. That was done in this case, because the day was named. It was not essential that he should fix the hour of the day. But the hour of sale was duly advertised and intimated to the debtor six days before the day fixed. In regard to the amount of effects poinded, that was explained by the fact that the expenses of executing the diligence were considerable, and besides the debtor was in arrear to his landlord, whose agent had intimated that he intended to interdict the sale in order to protect his hypothec. It was therefore necessary to poind as much as would enable the creditor to take the landlord's objection out of the way, and also to pay his own debt and the expenses. Hunter *v.* North of England Bank, 12 D. 65.

THOMS, for the suspender, was not called on.

The Court adhered, on the ground that the poinding was excessive. In this case the creditor may have proceeded in good faith, but if what had been done were sanctioned, great oppression and injustice might be committed. No opinion was expressed as to whether it was fatal to the diligence that the hour of the sale was not mentioned in the warrant of sale.

Agent for Suspender—Wm. Officer, S.S.C.

Agent for Respondent—John Thomson, S.S.C.

SECOND DIVISION.

M'TAGGART *v.* M'DOUALL.

Property—Foreshore—Right of Ware—Boundaries—Bay. Held that the principle to be applied in fixing the boundaries of two adjacent properties situated on a bay, with reference to the exercise of the right of sea-ware on the foreshore, is to take an average line of coast, and drop a perpendicular upon it from the termination of the land march between the properties.

This is a question of boundaries between two adjacent proprietors on the Bay of Luce. The pursuer seeks for declarator that, as proprietor of the lands of Ardwell, in the parish of Stoneykirk, and county of Wigtown, he has the "sole and exclusive right to the wrack, ware, and waith, whether growing or drifted, upon the shores adjacent to and *ex adverso* of his lands," which extend along the west side of the Bay of Luce, up to a certain boundary, or to another alternative boundary line. The defender, whose lands are situated to the south of the pursuer's, claims a different line of boundary, extending across the foreshore in a direction further north, and cutting off a part of the shore opposite the pursuer's lands. Both parties relying upon possession, as well as their legal right, a proof was taken. The Lord Ordinary (Kinloch) held that it was impos-