

into a conviction. There are regular methods in which words deleted in this way are dealt with, and as these have not been followed in this case, I think that is quite a sufficient ground for suspension. If the deletion took place before the magistrate signed, he should have authenticated it; if after, it was an outrage upon justice.

Then we are asked whether the conviction can stand on its own merits. The words of the conviction are—"Find the prisoner guilty of the crime, but in respect it was committed in self-defence, dismisses him." Now, self-defence is a well-known legal expression, and it is a defence of which due notice must be given. Now, I never heard before that when a man was proved to have committed an assault in self-defence he was held guilty. It is a direct contradiction in terms. It may have been intended to mean that the magistrate found that the alleged assault was committed in self-defence to a certain extent, but convicted him in respect that the retaliation was beyond all reasonable bounds. But it does not express that. If the words of the conviction are turned round, it will be seen how impossible it is to sustain it. It would then read—the magistrate "Finds that the assault was committed in self-defence, and in respect thereof find the accused guilty." I have no difficulty in holding that the conviction is bad, both on its merits, and in respect of the unauthorised deletion.

LORD TRAYNER concurred.

LORD MONCREIFF—I entirely agree with your Lordship on the first point. On the second point I confess I have a little doubt, because one reading of this conviction might mean that the magistrate found the accused guilty, but dismissed him in respect of the provocation received; meaning thereby that although the plea of self-defence had not been made out as a complete answer to the charge, yet there was a certain amount of excuse for the assault. On the other hand, after what your Lordship has said, I am not disposed to differ. The wording of the conviction is most misleading, as a finding that a man committed an act in self-defence generally means that he is not guilty. It is possible that the magistrate may have thought that as an assault was proved he was bound to convict, even although it was committed in self-defence.

The Court suspended the conviction.

Counsel for the Complainer—Munro.  
Agents—Sibbald & Mackenzie, W.S.

Counsel for the Respondent—W. Thomson.  
Agents—Mill & Bruce, S.S.C.

## HOUSE OF LORDS.

Friday, November 11.

(Before the Lord Chancellor (Halsbury) and Lords Watson, Shand, and Davey.)

EDINBURGH AND DISTRICT WATER TRUSTEES *v.* CLIPPENS OIL COMPANY, LIMITED.

(*Ante*, December 17, 1897, 35 S.L.R. 304, and 25 R. 370.)

*Police—Water Supply—Laying Mains on Public Roads—Edinburgh and District Waterworks Act 1898 (61 Vict. c. 24), sec. 23.*

The Edinburgh and District Water Trustees appealed against the interlocutors of 16th November and of 17th December 1897 (*vide report ut supra*). Pending the appeal the Edinburgh and District Waterworks Act 1898 received the Royal Assent.

By section 23 of said Act it is enacted—"The Trustees may at any time, for the purposes of conveying water from any of the sources of their water supply, whether existing or authorised, or for distributing and supplying water within the limits, districts, or areas, or any part of the same within which the Trustees are authorised to supply, sell, or distribute water, either in bulk or otherwise, and that whether within the limits of the Act or beyond the same, and so far as beyond such limits, with the consent of the road authority, lay down, make, and maintain and use aqueducts, conduits, or lines of pipe through, over, under, along, across, or into any public road or highway, and renew, alter, enlarge, duplicate, and increase the number and size thereof, or extend the same, and stop up temporarily any such public road or highway for such purposes, providing when possible a proper temporary substitute to the reasonable satisfaction of the road authority before interrupting the traffic on any such road, and making full compensation to all persons injuriously affected by anything done under the provisions of this section."

In the course of the hearing the Lord Chancellor stated that their Lordships were all of opinion that they would not grant an order to remove the pipes in question, because, however the earlier Acts might be construed (and on this point it was not to be assumed that all their Lordships were agreed) it was not contested that the foregoing section of the Act of 1898 gave the appellants power to lay the pipes.

The following order was ultimately pronounced:—"Of consent recal the interlocutors complained of, except in so far as they find the respondents entitled to the expenses in the Court below, and further find the respondents entitled to the costs of this appeal, and remit the cause to the Court of Session, with a direction to find that in the circumstances it is unnecessary to proceed further therein."

Counsel for the Appellants—The Dean of Faculty (Asher, Q.C.,—Cripps, Q.C. Agents—A. & W. Beveridge, for Millar, Robson, & M'Lean, W.S.

Counsel for the Respondents—The Lord Advocate (Graham Murray, Q.C.)—Coward, Q.C. Agent—John Kennedy, for J. Gordon Mason, S.S.C.

Monday, November 28.

(Before Lord Watson, in the Chair, and Lords Shand and Davey).

MESS v. HAY (SIME'S TRUSTEE).

(Ante January 18, 1898, 35 S.L.R. 372, and 25 R. 398.)

*Bankruptcy—Trust for Creditors—Possession—Pledge—Right of Private Trustee to Preferential Ranking in Subsequent Sequestration.*

A, the tenant of a farm, under a lease which expired at Martinmas 1896, granted, in July 1895, a conveyance of his whole estate, consisting of his right as tenant and the stock and crop of his farm, to B, "as trustee and in trust, and as my commissioner," with power to enter into possession thereof for the purpose (1) of managing the farm, and (2) of paying the truster's debts out of the surplus assets after payment of an allowance to the truster and remuneration to himself.

None of A's creditors acceded to this deed, and his estates were sequestrated in July 1896. B claimed to be ranked preferably in the sequestration for sums expended by him in seed and labour for crop 1896 and other expenditure, and for his remuneration, but the trustee disallowed the claim to a preference.

In an appeal B averred on record in general terms "that he accepted the trust created by the said trust-deed and commission, and in virtue thereof immediately entered into possession and management of the whole estate and effects of the bankrupt, and continued to possess and manage the same down to the date of the sequestration." It was not disputed, however, that during the whole period of B's management the bankrupt, in compliance with the terms of his lease, remained in the personal occupation of the lands and farm steading, no application having been made to the landlord for a transference of the lease, and that at the date of the sequestration the whole crops of the year 1896 were *partes soli*.

Held (*aff.* the judgment of the Second Division) that the appellant had not relevantly averred possession exclusive of that of the bankrupt, such as to give him a security for his outlays and remuneration upon the estate.

*Bankruptcy—Recompense—Factor's Claim for Outlay on Farm.*

A, the tenant of a farm, under a lease which expired at Martinmas 1896, exe-

cuted in July 1895 a trust-conveyance of his whole estate to B, with full power to enter into possession of and manage the farm. B, without obtaining a transference of the lease from the landlord, or effective possession of the stock and crop of 1896, expended the sums required for the seed and labour of that crop.

B's estates were sequestrated in 1896, while the crop of that year was *partes soli*, and B claimed that he had a preferential claim upon the proceeds of the crop of 1896.

The House of Lords (*aff.* the judgment of the Second Division) *sustained* the trustees' deliverance disallowing the claim for a preference.

The case is reported *ante, ut supra*.

Mr Mess appealed to the House of Lords.

At delivering judgment—

LORD WATSON—This appeal is taken in the bankruptcy of Alexander Sime, tenant of the farm of Moncur, in the parish of Longforgan and county of Perth, under a lease which expired at Martinmas 1896. Sequestration was awarded on 10th July 1896, the date of the first deliverance being the 2nd July 1896; and the respondent Alexander Hay, was duly appointed trustee. Accordingly from and after the 2nd July 1896 the whole moveable estate of the bankrupt became vested in the respondent, subject to such preferable rights and securities as were held by creditors.

By a trust-deed executed on the 26th day of July 1895 Alexander Sime conveyed his whole estate, heritable and moveable, to the appellant John Mess, chartered accountant in Dundee, "as trustee and in trust and as my commissioner (but hereinafter called trustee) for the uses, ends, and purposes after specified." Full power was given to the appellant to enter upon and take possession of the estate conveyed, and to do everything which the bankrupt could have done before granting the conveyance. The leading purposes of the deed were (1) that the appellant should manage the farm of Moncur, its cultivation and stocking, the lease, and to sell and convert into money the whole of the stock, crop, and implements, as he might think fit; (2) that he either until the expiry of the lease, if deemed advisable, or until renunciation of should have power to realise the truster's estate, both heritable and moveable, on such conditions and at such prices as he might think proper; (3) that he should have power to sue and defend actions at law, or other proceedings for recovery of or in relation to the estate; (4) that he should pay out of the first and readiest of the estate and effects, rents, wages, and other preferable claims, and also expenses, including an allowance to the truster, and a reasonable gratification to himself; and (5) that the appellant should, as soon as convenient, out of the remainder of the trust-estate and effects, pay the debts of the whole just and lawful creditors of the