contained in the deed of entail,—so that if Mrs Gray had executed no deed habile to convey the lands, that destination would have received effect. But a deed was executed which was capable of conveying the lands, and the question for determination is whether that deed has effectually conveyed the fee. If this case had presented substantially the same question as occurred in the case of *Thoms*, I think, after the expressions which fell from Lord Colonsay in the House of Lords in the case of *Glendonwyn*, it would have been only right that the question should have been re-argued, and probably before the whole Court. That question would have arisen if, in place of a trust-disposition such as we have here with detailed purposes, all of which deal with a large estate, there had been simply a general conveyance of lands and estate—it might be in favour of the second husband—without any purposes indicating the nature or extent of the estate which the truster intended to convey. But I do not think we are in a case of that kind, for I am of opinion that, even if the presumption were that a simple general disposition does not affect the fee of a property held by the granter under a special destination with substitutions, yet there are circumstances or specialties (to use the expression of Lord Colonsay in the case of *Glendonwyn*) which here leave no doubt that the truster intended to convey, and therefore did convey, this estate by her trust-disposition and settlement. And accordingly, in deciding this case, so far as I am concerned I proceed entirely upon the principle of the case of *Glendonwyn*. The result is different. In the case of *Glendonwyn* it was held that the circumstances were such as to show that the estate was not conveyed. In the present case I am of opinion that the circumstances are such as clearly to show that the estate was conveyed. We have had in previous cases considerable discussion as to the extent to which proof is admissible as bearing upon the intention of the granter of the deed. I am very far from thinking that a proof at large could possibly be allowed upon such a matter. But, on the other hand, I think it clear that there are here facts decisive of the question which the Court are entitled to take into view, and which are supplied on the record and proof. Those facts are shortly these —In the first place, that this lady had, immediately before executing this deed, disentailed the estate ; in the second place, that it was her intention to surrender the policies which are mentioned in the confirmation of her estate printed in the appendix, and that that intention would have been carried out but for the circumstance that she died suddenly ; and as the result of what I have now stated, in the third place, that practically this lady had no estate whatever which she could call her own except the estate of Carse which is now the subject of dispute. She possessed some moveable estate consisting only of furniture. She had the rents of the estate of Carse, but there was no accumulation of them, for they were required for the annual family expenditure and maintainance. The deed throughout its whole terms deals with a very large estate, and this lady had no other estate with which she could deal, heritable or moveable, except the estate of Carse. I say the deed deals with a large estate, and I do not intend to repeat what your Lordships have said upon that subject; but I may observe that in the first place an annuity of £1000 a-year is provided to the second husband, which upon ordinary calculations may be taken to represent about £20,000 of a capital sum. There are children's provisions—to the first family of £4500, and to the second family of the same amount. So that altogether there is a capital dealt with expressly of about £30,000, and beyond that there are provisions for payment of legacies which might be left, and for the distribution of a residue among the various members of her family by both her marriages. If it is to be held that Carse was not in the view of the truster in executing this settlement, she was dealing with enormous sums with nothing whatever in her possession from which those sums could be provided. In addition, as your Lordships have pointed out, there are powers in this deed by way of sale of heritable property which can only be accounted for upon the footing that she was dealing with the estate of Carse. I agree with your Lordships in thinking that there is no doubt that it was the purpose of this lady to convey the estate of Carse by this deed, and that she has effectually done so.

The Court adhered.

Counsel for Pursuer (Reclaimer)—Balfour—Mackintosh. Agents—Mackenzie & Black, W.S.

Counsel for Defenders (Respondents)—Asher—J. P. B. Robertson. Agents—Webster, Will, & Ritchie, S.S.C.

Thursday, March 28.

NORTHERN CIRCUIT.

(Aberdeen.)

YOUNG *v.* YTHAN FISHERY BOARD.

(Before Lord Young.)

Justiciary Cases — Fishing — Weekly Close-time— Where Annual Close-time for Salmon-Fishing ends on Sunday Evening.

Held by Lord Young—*affirming* the Sheriff-Substitute of Aberdeenshire (Comrie Thomson)—upon a construction of "The Salmon Fisheries (Scotland) Act 1862, that the annual close-time of 168 days provided to be observed by the 7th section of that Act has no reference to the days of the week, and that where it terminated at twelve o'clock on the night of Sunday, the weekly close-time as fixed by the same section of the Act applied so as to prevent any fishing till six o'clock upon Monday morning.

Counsel for Appellant — Shaw. Agent — H. Maclennan.

Counsel for Respondents—Jameson. Agent—F. T. Gordon.

HIGH COURT OF JUSTICIARY.

Wednesday, May 29.

HAMMILL AND MARR *v.* M'ARTHUR.

(Before the Lord Justice-Clerk and Lords Craighill and Adam.)

Justiciary Cases—Statute—General Police Act 1862 (25 *and* 26 *Vict. c.* 101), *sec.* 251—*Jurisdiction—Circuit Court.*

A bill of suspension of a conviction under the General Police Act 1862, sec. 251, was presented to the High Court of Justiciary on the ground that the complaint upon which the conviction was obtained did not charge an offence either at common law or under the statute. It was objected to the competency that by section 430 of the Act such a suspension must be taken to the Circuit Court. The Court repelled the objection, and *held* that section 430 did not apply where the ground of suspension was that stated above.

Justiciary Cases—General Police Act 1862 (25 *and* 26 *Vict. c.* 101) *sec.* 251—*Conduct Calculated to Provoke Breach of the Peace.*

Held that a complaint which libelled the playing the tune of "Boyne Water" through the streets of a burgh as an offence under the General Police Act 1862, sec. 251, which, *inter alia*, prohibits the use of "any threatening, abusive, or insulting words or behaviour, with intent or calculated to provoke a breach of the peace, or whereby a breach of the peace may be occasioned," was irrelevant, and contained no charge of any crime known to the law.

This was a suspension of a conviction pronounced in the Police Court of the burgh of Kinning Park upon a complaint at the instance of the respondent Charles M'Arthur, Procurator-Fiscal of Court, setting forth—"That Adam Hammill . . . and William Marr . . . have both and each or one or other of them contravened the 251st clause of the General Police and Improvement (Scotland) Act 1862, actors or actor or art and part, in so far as on Saturday the 23d day of March 1878, or about that time, they did both and each or one or other of them, in Paisley Road, West Stanley Street, West Scotland Street, Anderson Street, and Keyden Street, Kinning Park, or in one or more of said road and streets, use threatening, abusive, or insulting words or behaviour, with intent or calculated to provoke a breach of the peace, or whereby a breach of the peace was occasioned, viz., they did both and each or one or other of them, in all and each or one or more of said road and streets, along with some person or persons to the complainer unknown, march along said road and streets, or one or more of them, playing on flutes or some other musical instruments to the complainer unknown, one or more tune or tunes insulting or annoying to all or one or more of the residents or passengers in said road and streets, or one or more of them, viz., "Boyne Water," and one or more like tunes, abusive or insulting to all or one or more of the said residents or passengers, by all which or part thereof a large crowd of persons was assembled, and by all which or part thereof the residents or passengers in said road and streets or one or more of them were obstructed or annoyed or put in danger." &c.

For the respondent it was contended, in the first instance, that the bill of suspension was incompetent, in respect that under the 430th section of the Police Act of 1862, which had been adopted in Kinning Park, appeal fell to be made to the next Circuit Court after the date of the conviction. The section bore that a suspension "must be presented before the next Circuit Court of Justiciary, or where there are no Circuit Courts, before the High Court of Justiciary at Edinburgh, in the manner and by and under the rules, limitations, conditions, and restrictions which shall from time to time be prescribed by the said High Court of Justiciary."

Argued for the suspender—The bill was competent, because (1) had it not been taken, Marr would have been obliged to thole his whole term of imprisonment; and (2) the ground of suspension was not one of the grounds of appeal mentioned in the 430th section, and if there was not this remedy of suspension there was none at all. The ground of suspension maintained was that playing "Boyne Water" was not an offence at common law or under the 251st section of the statute here founded on by the prosecutor.

Argued for the respondent—Everyday experience made it clear that this charge, which might at first sight appear trivial, was of serious import. The mere playing of the "Boyne Water" was not criminal, but the Act had made not only words but behaviour used or done with the intent to provoke a breach of the peace, or which might produce a breach of the peace, an offence.

The Court found the suspension competent, and at advising—

Lord Craighill—According to my reading of the complaint, what is there set forth as an offence cannot be regarded as such under any provision of this statute. In the view which I take of the Act it is necessary in order to obtain a proper conviction that the words of behaviour charged should be "threatening, abusive, or insulting," not in the estimation of passengers or residents in a particular neighbourhood, but in the estimation of the law itself. It is quite true that if the words were of the character described in the legal acceptation, and were uttered with the intent to create a breach of the peace, or were calculated to do so—if a breach of the peace had been produced, and if, further, an obstruction had been produced and an annoyance or danger to residents or passengers—the statutory offence would be committed. But the Court do not inquire, and indeed are not entitled to make any appeal to passengers or residents in the neighbourhood till it has been ascertained in the first instance whether the words used were of the legal character described; and second, whether they were used with intent to commit a breach of the peace, or whether a breach of the peace had been committed. Now, all that is here charged is that the suspender had played on a flute certain tunes which were annoying and abusive. But it is not possible that the Court can take the Justices' view of that. We must take the tune itself, and all we know of the "Boyne Water" is that it is a tune of which the name is familiar, but nothing else. The law does not know that the