For these reasons I think that the taxing clauses do not apply to the portion of Miss Scott's estate which came to the executors of Mr Methven; and all the illustrations which have been put, and all the questions which have been asked, really seem to me to depend upon the answer to that question. If, within the Act, it has become part of the personal estate and effects, then no doubt probate would be required to make title to it. If it has not so become part of the estate, then probate would not be required to make title. When once that question is answered all the other questions seem to be answered fully and without difficulty.

I will not detain your Lordships more than a moment upon the suggestion that if it is not within the words of the statutes I have quoted it is within the words of the Stamp Duties Act of 1860. It seems to me impossible to say that it was any part of "the personal or moveable estate and effects which" a person "shall have disposed of by will under any authority enabling such person to dispose of" as he thought fit.

The only question remaining is whether the beneficial interest can be regarded as subject to the payment of legacy duty by the beneficiaries. That depends upon the construction of the Stamp Duties Act of 1845, which defines as a legacy liable to duty "every gift by any will or testamentary instrument of any person which by virtue of any such will or testamentary instrument is or shall be payable or shall have effect or be satisfied out of the personal or moveable estate or effects of such person or out of any personal or moveable estate or effects which such person hath had or shall have had power to dispose of." It seems to me impossible to say that any moneys which may be received by virtue of the dispositions which have been under consideration, by the persons who are named as beneficiaries in Mr Methven's will, who in consequence of Miss Scott's disposition would take certain further benefits, are received as gifts by Mr Methven's will, which by virtue of that will are payable out of any personal estate of his or any "personal estate" which he had "power to dispose of."

For these reasons I move your Lordships that the judgment appealed from be affirmed and the appeal dismissed with costs.

LORD WATSON—I also am of opinion that the judgment appealed from ought to be affirmed. I do not wish to suggest that Miss Scott could not have made such a testamentary disposition in favour of the beneficiaries under the will of Robert Methven as would have entitled the Crown to claim payment of duty. She unquestionably could have directed the trustees of Methven, whom she made her executors, to pay these duties to the Crown, and that direction would have been imperative. I do not think it is necessary to speculate how far she could have accomplished the object of making the Crown entitled to these duties by indicating that her bequest was to be in the same position under these statutes as if it had in point of fact belonged to the nephew who predeceased her. I am satisfied that no such thing was either done or attempted here. Miss Scott created, according to my view, a new trust in the persons of Methven's executors, the purpose of the trust being, not that the fund which she committed to them should become part and parcel of the deceased's estate, but that it was to be administered by the trustees as a separate estate, in the same manner and subject to the same conditions as if it had originally been the property of Methven himself.

LORD ASHBOURNE—I entirely concur. The claim of the Crown is practically for the recovery of a double duty, and for the reasons stated by the Lord Chancellor I think their case has entirely failed.

LORD MORRIS concurred.

The House affirmed the decision of the First Division and dismissed the appeal with costs.

Counsel for the Appellant—Lord Advocate Balfour, Q.C. — Solicitor-General Sir John Rigby, Q.C — Patten Macdougall. Agents—Sir W. H. Melvill, Solicitor for England of the Board of Inland Revenue, for P. J. H. Grierson, Solicitor for Scotland of the Board of Inland Revenue.

Counsel for the Respondent—Sir Henry James, Q.C. — Lorimer — T. Shaw — James S. Henderson. Agent—D. E. Chandler, for William Black, S.S.C.

Thursday, March 8.

(Before the Lord Chancellor (Herschell), and Lords Watson, Ashbourne Macnaghten, and Morris).

EDINBURGH UNITED BREWERIES, LIMITED, AND OTHERS *v.* MOLLESON AND ANOTHER.

(*Ante*, vol. xxx. p. 568, and 20 R. 581).

Contract—Sale—Condition—Misrepresentation—Title to Sue.

By agreement entered into on 11th November 1889 M agreed to sell to D a brewery at the price of £20,500, to be paid by the 31st December, when a conveyance was to be granted to D or to any company to which he might assign his interest. On 14th December D agreed to sell the brewery to the Breweries Company at the price of £28,500. On 31st December M, at D's instance, and in fulfilment of their contract of 11th November, granted a conveyance to the Breweries Company, and D's interest in the brewery ceased. The agreement of 11th November provided that "the arrangement proceeds on the basis that the nett profits of the brewery amounted during

each of two years ending the 31st December 1888 to £3750, or thereabouts upon an average;" further, that if this was not the case, that the agreement should be at an end; and that D should have access to all the business books for examination. D had the books examined by accountants, who reported them as showing profits near the specified amount. A year after the conveyance of 31st December it appeared that one of M's clerks had (without M's knowledge) falsified the books with the result of making the profits appear larger than they actually were.

The Breweries Company, with concurrence of D, sought to reduce the sale, and offered to return the brewery, maintaining (1) that as between M and D the agreement was based on the amount of the profits; and (2) that D's rights were passed by him to the company.

Held (*aff.* the decision of the First Division) that the pursuers had no title to sue, as (1) D had no interest in the brewery; and (2) the disposition did not embody the stipulation of the contract of 11th November, and therefore the Breweries Company had no right as against M.

This case is reported, *ante*, vol. xxx. p. 569, and 20 R. 581.

The Edinburgh United Breweries Company and others appealed.

At delivering judgment—

LORD CHANCELLOR (HERSCHELL)—This is an appeal from an interlocutor of the First Division of the Inner House affirming an interlocutor of the Lord Ordinary. The action is of a somewhat peculiar character. The pursuers are the Edinburgh United Breweries Company and Mr Dunn; the defender is Mr Molleson. Mr Molleson, who was the trustee of a brewery belonging to Mr Nicolson, on the 11th of November 1889 entered into a contract with Mr Dunn for the sale to him of the Palace Brewery and the business and stocks connected with it. The purchase was to take place as from the 15th of November 1889, at the price of £20,500. The purchase-money was to be paid by the 31st of December, at which date a conveyance was to be executed either to Mr Dunn or to any company to which he might assign his interest, it being no doubt in contemplation at that time that a company would be formed for the purpose of carrying on this and other businesses. That was a matter in which Mr Molleson had no concern or interest, except that he agreed to make the conveyance either to Mr Dunn or to such nominee of his. The 10th clause of the agreement is the one upon which the appellants place their reliance.

Before reading the terms of that clause, however, I will state to your Lordships what subsequently took place. Mr Dunn, on the 14th of December, entered into an agreement with the United Breweries Company, the pursuers, by which he agreed to sell them this brewery and several other breweries. To some of the terms of that agreement I shall have presently to call your Lordships' attention, but the price to be paid by the United Breweries Company to Mr Dunn, who it appears was really acting for the Contract Corporation, was the sum of £28,500, being £8000 more than the price which was to be paid by Mr Dunn to Mr Molleson. On the 31st of December a conveyance was executed by Mr Molleson, at the instance of Mr Dunn, by which Molleson, in implement of his contract of the 11th of November, conveyed to the United Breweries Company the Palace Brewery and all the other subjects of the contract of the 11th of November; so that a profit was made upon the transaction by Mr Dunn, or the Contract Corporation (it matters not which), of £8000. Mr Dunn at that date ceased to have any interest in the Palace Brewery or in the contract entered into with Mr Molleson.

The tenth clause of the original agreement provided that "the arrangement herein set out proceeds upon the basis that the net profits from said brewery and wine businesses amounted during each of the two years ending 31st of December 1887 and 31st December 1888 to £3750 or thereabouts upon an average." It further provided that, "in the event of its being ascertained that this is not the fact, this arrangement shall be at an end, and the second party" (that is Mr Molleson) "shall be bound to repay the said sum of £3700," which was the deposit to be paid upon the execution of the agreement. "The first party" (that is Mr Dunn), "with the view of verifying the amount of the profits for said two years, shall immediately upon delivery thereof be entitled to have the books, accounts, and vouchers connected with said businesses examined by an accountant named by him." In accordance with the provisions of that clause all the books of Mr Molleson connected with the brewery were placed before accountants selected by Mr Dunn, and were examined by them as fully as it appeared to them to be necessary to examine them. They reported that the books showed a profit of somewhat less than the sum named—that is to say, a profit of £3300 instead of £3750; but there was a discussion as to whether they had arrived at the profits upon the true basis. I do not think that, for the present purpose, the difference between £3300 and £3750 is material; I will take it for the purposes of my judgment that the books shewed, according to the report of the accountants, the profit stated, namely, £3750. It was discovered, something more than a year after the conveyance to the Brewery Company, that the books had, in fact, been improperly dealt with by a clerk in the employ of Mr Molleson — that he had altered some of the items in the books with the view of making the profits appear greater than they really were. I assume, for the purpose of the opinion which I am about to express, that although all the books, vouchers, and accounts were in the hands of the accountants, and they could, if they had examined them, from the

materials in their possession, have found out the frauds which had been committed, yet the kind of examination contemplated by the parties to the contract was such that the frauds would not in ordinary course have been discovered.

Under these circumstances the United Breweries Company and Dunn come as pursuers, claiming a reduction of the disposition entered into between Molleson and the Breweries Company and Molleson and Dunn, and insist that they are entitled to have those agreements and dispositions reduced. Their case is put by the learned counsel for the appellants in two ways. First, it is said that under the contract between Dunn and Molleson profits were made the basis of that contract; that the contract itself provided that if it were ascertained at any time that those profits had not been made the contract should be at an end; that all the rights of Dunn under the contract were passed by him to the United Breweries Company, and that therefore the United Breweries Company are entitled as a matter of contract to say that the transaction not having been carried out in accordance with that which is declared to be its basis, and the United Breweries Cempany and Dunn having been misled into believing that the books were what in fact they were not, the United Breweries Company can themselves maintain this action of reduction in right of the transfer to them by Dunn of his rights.

My Lords, that depends of course upon the construction of the 10th clause of the contract. I will assume that whilst the matter was *in fieri*, until the 31st of December, when the conveyance was executed, the United Breweries Company, under their contract with Dunn, could have taken advantage of this stipulation in Dunn's contract with Molleson, and have insisted that the arrangement was at an end. But the question is, what is their position in that respect after the disposition of the 31st of December, by which the brewery was conveyed to and vested in the Breweries Company, the total purchase-money being paid by Dunn to Molleson. Now, my Lords, it appears to me that the very terms of the 10th article of the contract show that it is only providing as a matter of contract between the parties for what is to take place between the making of this contract and the disposition in implement of it. It is true that there is no limitation in terms of the time during which this 10th clause is to operate, but it appears to me that that time is necessarily ascertained by the terms of the clause—"In the event of its being ascertained that this is not the fact" (that is, that such profits are not made), "this arrangement shall be at an end, and the second party shall be bound to repay the said sum of £3700." That is the sum which would be payable prior to the execution of the conveyance; it was "this arrangement," this contract, which was to be at an end, and it was this sum which was to be repaid.

Now, it seems to me that that shows as plainly as anything can that the contract did not provide for the insertion in the disposition of any clause making that disposition void if the profits were ascertained to be less than was stated, but what both of the parties contemplated was that the time given down to the 31st of December would be sufficient for ascertaining whether the alleged or suggested profits had been made, and within that time no doubt the arrangement would have come to an end in accordance with clause 10, if it had been ascertained that the alleged profit had not been made. But when this disposition was executed the contract ceased to be *in fieri*, and the rights of the parties fell to be ascertained by the terms of the disposition. It is not at all infrequent for an agreement to contain stipulations which find no place in the subsequent disposition, but the rights of the parties must be ascertained by the disposition executed in implement of the contract, and not by the contract which contemplates that implement. When once the disposition is executed, it seems to me that as a general rule (of course I am not saying there may not be exceptions) the rights under the contract come to an end. In this case I think the very terms of article 10 are inconsistent with the continuance of it, or, at all events, that it is inapplicable to the period after the disposition has been executed. It appears to me therefore that assuming that all the rights, including this right, under clause 10, were passed by Dunn to the United Breweries Company by his agreement with them of the 14th of December, yet after the execution of the conveyance of the 31st of December it ceased to be possible for them to rest upon this 10th clause as making that transaction void, and of course that transaction is the one which they seek to set aside. No doubt, if there had been any fraud, if there had been misrepresentation, it would have been open to Dunn, notwithstanding the execution of the conveyance, to set aside the conveyance and to put an end to the transaction altogether. That is not for a moment disputed, and, in truth, the stress which has been laid upon the 10th clause and the allegation that it contains a contractual right which was passed on to the Breweries Company and which still exists, have resulted from the difficulty in which the appellants felt themselves by reason of the circumstance that it is not Dunn who is now seeking to set aside the contract, but that it is the United Breweries Company, in truth, who are now the owners of the subjects of it.

Therefore, in my opinion, the first ground upon which the appellants rested their case fails in point of fact; on the true construction of this 10th clause there is nothing upon which they can now rest as a contractual right created by it.

But then it is said that Dunn was led to take this disposition instead of asserting any right which he might have under the 10th clause, by reason of misrepresentation on the part of Molleson—that the books which were examined by the accountants must be taken to have been represented by Molleson as proper and genuine books, and that inasmuch as they were not so,

Dunn would be entitled as against Molleson to rescind or obtain reduction of the conveyance. My Lords, I will for the present purpose assume that to have been the case; but the question is, can there now be reduction in this suit at the instance of the present pursuers under the circumstances which exist? Dunn, in point of fact, parted with the property, and the conveyance was made at his instance to other people in pursuance of a contract of sale by him to them at a profit. Would Dunn then be in a position, having parted with the property and having parted with it at a profit, to come into Court and say, "I am entitled to claim that this contract shall be reduced." It is said that he has that right, because although he has parted with the property, the persons who are the present owners of the property, and who took from him, are brought also into Court as co-pursuers, so that the two together, at all events, could restore the subject-matter to Molleson. Does that give them a title to sue?

Now, even if it be admitted that if where a person who has purchased through a misrepresentation has re-sold, those representations have been repeated by him to the persons to whom he has re-sold, in such a manner as that they could impeach the transaction as against him, in that case, even without an actual reduction of the re-sale, the transaction might be reduced as against the original seller—even admitting that, it appears to me that no such case is really made here, either upon the pleadings, or, as far as I can see, upon the facts. The learned judge Lord M'Laren states more than once in his judgment that it was admitted that the contract of Dunn with the company was neither impeachable nor impeached; but whether that was admitted or not, it seems clear, when one looks at the pleadings, that no such case was set up. It is quite true that in the 8th condescendence it is stated that "The information obtained from the sellers by Mr Dunn with reference to the assets and past profits of the said business, was communicated to the pursuers, the Edinburgh United Breweries, Limited." But the 9th condescendence, up to which that leads, sets up this case, that Mr Molleson "either knew, or ought to have known, that the" balance-sheets "were false and were fraudulently concocted, in order to show said excessive profits. Whilst in that position he handed the said false balance-sheets to the pursuers" (that is, the United Breweries Company and Dunn) "for the purpose of getting them to enter into the contract in question" (the contract in question appears from the context to mean the one of the 11th of November 1889) "on the basis of the profits thereby shown. Mr Molleson thereby induced the pursuers, by false and fraudulent representations, to enter into the said contract." Now, it is obvious that the case there set up is that, the transaction of the 11th of November, though nominally Dunn's, was really not only that of Dunn, but that of Dunn and the United Breweries Company. Of that there is not only no proof, but it is completely disproved; but that is the case set up upon the pleadings, and it is nowhere alleged that Dunn entered into the contract with the United Breweries Company under such circumstances and with such representations that as against him they are entitled to set aside the contract and claim reduction. For aught that appears upon these pleadings, Dunn may be quite prepared, as between him and them, to stand by the contract, although he may be willing to assist them in restoring the brewery to Mr Molleson and getting back the £20,500. It is not alleged anywhere that his contract with them is impeachable; no circumstances are shown raising any such case.

And, my Lords, when we come to the evidence which was read to us by the Solicitor-General yesterday, we know very little of what the transaction was as between Dunn and the company; but I certainly do not think it can be said to have been made out in any way that this contract could have been impeached as between Dunn and the company. It is said that the representations which were made by Molleson to Dunn were passed on by him to the company. Now, I think that that mode of stating the facts involves a fallacy. It may be that representations made to one are passed on, as it is said, by him to another, but they do not become, and are not necessarily, the same representations as were made to the person who originally received them.

It is said (and on that the whole case rests) that Molleson must be taken to have represented to Dunn that the books handed to him for inspection were genuine and properly kept books; but it is impossible to say that there is any evidence of any representation made by Dunn to the company which can be treated as a representation that the books tendered by Molleson were in fact genuine. It is rational enough to hold that as against Molleson, that is the effect of his handing over the books, but when Dunn informs those to whom he is selling, as he obviously did by showing them the contract, that the books to be examined by the accountants are the books handed over by Molleson, and when he hands to them the result of the accountants' inspection of those books, the utmost representation which he can be taken to have made is this—here is the report of the accountants whom I have employed as to what is shown by the books which Molleson handed over to those accountants as the books of the business. Beyond that it seems to me to be impossible to say that any representation was made by Dunn to the United Breweries Company. Therefore it appears to me that in the present case there is really no foundation laid for impeaching this contract as between Dunn and the United Breweries Company, even if (upon which I express no opinion) it would have been enough to show that the contract was impeachable, and if it would not have been necessary, before such a proceeding as this was instituted, to have

had it impeached and put an end to. I express no opinion upon that, but at all events I think that the foundation is altogether wanting unless the case can be brought up to that point.

I ought perhaps to add one other observation in connection with what I have just said, namely, that I must certainly not be taken as assenting to the view, or as expressing any opinion upon it, that if a person who has been induced by misrepresentation to buy a property has parted with that property, and if he can get back that property in any way so as to put himself in a position to restore it, he is then always in a position to claim reduction of the contract into which he was led by misrepresentation.

For these reasons, I move that the judgment appealed from be affirmed, and the appeal dismissed with costs.

LORD WATSON—Although I have come to the same conclusion as regards the result with the learned Judges of the First Division, I am not in a position to give an unqualified assent to all that has been expressed in the judgment of Lord M'Laren, who delivered the opinion of the Court; and that for two reasons—in the first place, because I have not heard argument or made up my mind upon many points discussed in his judgment which it is unnecessary to advert to now, and also because upon those points on which we have heard argument, I am not prepared to concur with all that fell from Lord M'Laren.

It appears to me to be very necessary to keep in view the position of the three parties who appear upon the scene in this appeal, Mr Molleson, Mr Dunn, and the company. The contract sought to be set aside, which was implemented by a conveyance to the company, was a contract to which Mr Molleson and Mr Dunn were the only parties. There was no privity between Molleson and the company, and in conveying to them Molleson simply fulfilled the obligation which he had undertaken to Dunn to make a conveyance to his nominee. The deed of conveyance is the only contract between Mr Molleson and the company. By the ordinary rule of law, the moment a conveyance is accepted as in implement of the obligations of a contract, the original contract is at an end, and the conveyance constitutes the only contract between the parties.

In this appeal two grounds are urged for the rescission of the original contract by Mr Dunn, and also by the company, because they sue together, and if either has shewn a good title for rescinding the contract upon restitution the appellants must prevail. Now what is the position of Mr Dunn? He made a remunerative sale, and he has no interest in the brewery, which was the subject of these dealings; and if he made a valid contract of sale to the company to be followed by a conveyance in virtue of his contract with Mr Molleson, it humbly appears to me that his title to challenge this transaction with the respondent came to an end the moment the conveyance was completed.

I do not concur with some observations of Lord M'Laren to the effect that although the contract between him and the company might not be reducible, Dunn might by some arrangement with the company be enabled to bring an action for rescission upon tendering restitution. It may be that if the contract had been thrown back upon his hands by the company, and was reducible at their instance in a question with him, he would have been remanded to his original position and have been entitled to any remedy which he could have pursued before he parted with the brewery; but unless the sale by him to the company was reducible upon legal grounds, it appears to me that Mr Dunn could not have rehabilitated himself so as to revive in his favour a remedy against the seller to him. I am assuming for the purposes of this case that Mr Molleson did make representations which would have entitled Mr Dunn, so long as he retained the brewery, to the remedy of rescission. Upon that point I, of course, desire to express no opinion, because, although the Court below has dealt with and expressed an opinion upon the point, I certainly do not feel inclined to concur upon a matter which obviously presents questions of delicacy and difficulty without having heard a full argument.

Therefore it appears to me that Mr Dunn as a pursuer is out of the case; he had no title in his own right, and I do not see how his concurrence can in the least degree aid the title of the company.

The title is rested upon two different grounds; one of them is the supposed transmission to them of a conventional stipulation which gives them a right to rescind the contract; the other is a ground dehors the contract, which rests apparently upon the transmission by Dunn to the company in his dealings with the company itself, of the representations made to him by Mr Molleson. As to the first, the conventional ground, I can only say that there does not appear to me to exist any right of rescission which could be conveyed to the company by Dunn. The agreement conveys from Mr Dunn to the company all his rights under the contract, and one of these rights is said to be contained in article 10 of the contract. The terms of that article have been fully explained by my noble and learned friend the Lord Chancellor, and in my opinion they do not amount to a condition resolutive of the contract when concluded, by payment of the price and disposition of the property. They apply merely to the interval of time which the parties apprehended would elapse between the making of the antecedent contract and the conveyance which was to follow in execution of it, and they expired by efflux of time.

The next ground pleaded assumes that this contract of sale by Dunn to the company was reducible at the instance of the latter, because the representations made by Mr Molleson to Mr Dunn were trans-

mitted and handed on by Mr Dunn to the company. In the first place, my Lords, there is no record for that. It is perfectly obvious that before the First Division at least, whether the counsel meant it or not, they must have expressed themselves in terms which led the Court to understand that Mr Dunn was holding by his £8000 under his contract with the company. Whether that impression was right or not it is not for me to say; the question is not brought before us. But I think it right to add that although the record was supplemented in argument by a verbal condescendence by the Solicitor-General, nothing that he said was calculated to suggest that any relevant case could be made by the appellants for setting aside the agreement with Mr Dunn.

LORD ASHBOURNE—I entirely concur, and think the contentions of the appellants wholly untenable.

Mr Dunn has made a profit of £8000 out of the transaction, and I do not see how the United Breweries Company can practically ignore that circumstance, and occupy a stronger position than the man through whom they claim. As Lord M'Laren well says in his judgment—"If the right claimed by the United Breweries be well founded, the principle obviously admits of indefinite extension, and there is no reason why a purchaser from the United Breweries, under a contract which is unimpeached, should not have the same right of action against Mr Molleson which the United Breweries have according to the conception of their claim." I would myself have inferred very clearly from the pleadings and the judgment referred to that this suit was sought to be maintained without any intention of offering restitution; and notwithstanding the argument for the appellants, I am by no means satisfied that any such intention has at any time been very clearly entertained. It is certainly not expressed in the pleadings.

The whole judgment of Lord M'Laren proceeds on the clear basis—repeated more than once and never contradicted—that rescission was sought without any offer of restitution, and that a right of relief was sought by him who was at the same time seeking to retain a benefit procured by what is now assailed as a fraud. An effort has been made in argument to impeach the contract between Dunn and the United Breweries. But no such case is made in the pleadings, and I think that it is quite unsustainable in argument, and, as far as I can see, unsupported on the facts in evidence in the case.

LORDS MACNAGHTEN and MORRIS concurred.

The House affirmed the decision of the Court of Session, and dismissed the appeal with costs.

Counsel for the Appellants—Solicitor-General Sir John Rigby, Q.C.—Asher, Q.C. —T. Shaw, Q.C. Agents — Nicholson, Graham, & Graham, for Philip Laing & Company, S.S.C.

Counsel for the Respondents—Lord Advocate Balfour, Q.C.—Ure. Agents—Faithfull & Owen, for Davidson & Syme, W.S.

Tuesday, March 13.

(Before The Lord Chancellor (Herschell), and Lords Watson and Macnaghten.)

WILSON, SONS, & COMPANY (THE "OTTO") *v.* CURRIE & COMPANY (THE "THORSA").

(*Ante*, vol. xxx., 767, 20 R. 876.)

Ship—Steamship Approaching so as to Involve Risk of Collision—Collision—Whether Risk Determined—Admiralty Rules 15, 18, 19, *and* 21.

The steamships "Thorsa" and "Otto" were approaching each other end-on or nearly end-on in daylight, in a narrow channel. When a mile apart the "Thorsa" signalled that she was going to starboard, and at the same time put her helm to port, which brought her head a point or nearly a point to starboard. The "Otto" heard but disregarded the "Thorsa's" signal, and kept her course. Two minutes afterwards, when the ships were within half-a-mile, the "Thorsa" repeated the signal and again ported her helm. The "Otto" immediately afterwards starboarded her helm, bringing her head to port, and went across the bows of the "Thorsa." The "Thorsa" immediately stopped and reversed, but she ran into the "Otto" and sank her. From the time the ships were distant at least a mile from each other, the "Otto" did not alter her course until just before the collision, nor were her engines ever stopped or reversed. The owners of the "Otto" admitted that their vessel was in fault, but argued that the "Thorsa" was also in fault, and accordingly liable in one-half of the aggregate damage, because (1) she did not port sufficiently to determine the risk of collision, and (2) because she did not stop and reverse in time.

Held (*aff.* decision of the Second Division) (1) that although it was not clear whether the extent to which the "Thorsa" ported at first was sufficient to determine the risk of collision if the "Otto's" course had not been altered, it was sufficient if the "Otto" had ported her helm. But it was clear that the second time the "Thorsa" ported her helm she had done enough to determine the risk of collision provided the "Otto" held on her course; (2) that the necessity to stop and reverse the "Thorsa's" engines did not arise until the "Otto" changed her course, and that the "Thorsa" had accordingly stopped and reversed in time.