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.

This case is reported *ante*, vol. xxx. 767, and 20 R. 876.

Wilson, Sons, & Company appealed.

At delivering judgment—

LORD CHANCELLOR (HERSCHELL) — This is an appeal from an interlocutor of the Second Division of the Court of Session. The Lord Ordinary found that both the "Otto" and the "Thorsa" were to blame for a collison by which the "Otto" was sunk. The Inner House, reversing this judgment, held that the "Otto" alone was to blame, and that the "Thorsa" was not to blame. No attempt has been made to impeach the finding of the Court below with regard to the "Otto," and indeed any such attempt would have been useless, because it is perfectly clear that the "Otto" was very seriously to blame.

The vessels were proceeding upon, generally speaking, opposite courses, the one up and the other down. The "Otto" had left her pilot at Elsinore and was proceeding towards the Lappegrund lightship. Shortly before the time with which your Lordships have to deal, a vessel called the "James Malam," which was coming in the same direction as the "Otto" and had passed her, also passed the "Thorsa." Those two vessels passed starboard to starboard. After a manœuvre by the "Thorsa" had been executed for the purpose of passing clear of the "James Malam" the view taken by the Lord Ordinary and by the Inner House is that the two vessels, the "Thorsa" and the "Otto," were end-on or nearly end-on. The "Thorsa" blew one blast in order to indicate to the "Otto" that she was going to the starboard. She ported her helm in accordance with the indication which she had given by her whistle; and there seems to be no question that the sound of her whistle was heard on board the "Otto." There is some doubt as to whether the "Otto" at that time had ceased starboarding (she undoubtedly had been starboarding) and was keeping a steady course, or whether she was altering her course. It is not necessary to determine that question. According to the account of the master of the "Otto," she was keeping a steady course.

The "Thorsa," observing that the "Otto" was coming towards her and was not executing the corresponding manœuvre which the master of the "Thorsa" had been led to expect she would execute, blew the whistle again and again ported. Almost immediately afterwards the "Otto" hard-a-starboarded, coming across the "Thorsa." It is not disputed that as soon as that manœuvre was observed the master of the "Thorsa" directed that her engines should be stopped and reversed, and that his order was obeyed; and no complaint is made of the conduct of the master of the "Thorsa" in not stopping and reversing earlier than he did after the hard-a-starboarding manœuvre was observed. But it is said (and this is the only case now made against the "Thorsa") that she ought to have stopped and reversed at an earlier period; that when, at some time betwen the first whistle and the second, the master of the "Thorsa" saw that the "Otto" was not so manœuvring as to bring her port-side to port-side, it ought to have been seen then that there was a risk of collision, and that accordingly then the master of the "Thorsa" ought to have stopped and reversed.

Now, it is by no means clear upon the evidence that, supposing the two vessels had kept their courses after the first whistle, and that last manœuvre the hard-a-starboarding of the "Otto" had never taken place, the two vessels under those circumstances would not have passed each other without collision or danger. That they would have done so is stated by the master of the "Thorsa." Sir Walter Phillimore on behalf of the appellants suggests that they would have passed very close to one another, that it would have been a very fine thing, and that it would have been doubtful whether they would have passed clear. But it appears to me that the case of the "Thorsa" does not rest and ought not to be rested solely upon the question thus put. The master of the "Thorsa" a second time gave a signal to the "Otto" that he was intending to go to the starboard. Now, it is not denied that the vessels were able to see one another. They were manœuvring with the knowledge as far as vessels ever can have it of what was going on in the meantime; and if the story of the "Thorsa" which has been practically accepted by the Court below is anything like correct, namely, that the two vessels supposing their courses had not been changed would have passed clear although it might have been a near thing — it is obvious that under those circumstances, if the "Otto" had taken the step she ought instead of starboarding when she got that second signal, there would have been no collision whatsoever.

Now, under the circumstances which existed, it appears to me that the master of the "Thorsa" was justified in giving that second signal before taking any other step, and that he was justified in porting after giving that second signal to see whether the master of the "Otto" would not manœuvre in the manner in which proper navigation demanded that he should. Considering that it is by no means clear that the two vessels would not have passed each other with perfect safety if they had kept their courses, the master of the "Thorsa" was not bound to stop and reverse, but had a right to see whether the master of the "Otto" was going to manœuvre as he ought to have done. As soon as he saw that the "Otto" had starboarded he stopped and reversed. It appears to me certain that in this case the rule which has been relied upon by the learned counsel for the appellants has not been violated by the "Thorsa," and that she is consequently not to blame. I certainly do not desire to countenance the idea that a vessel is entitled to run the matter very fine and to go on until the last moment before stopping and reversing; but in the present case

it seems to me that the master of the "Thorsa," knowing the facts which existed and in the circumstances which had been observed by him, acted as reasonably as a seaman could, and did not fail in his duty in any way whatsoever.

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

LORD WATSON—Was the master of the "Thorsa" when he ported a second time justified in assuming that the action of his helm would be sufficient to determine the risk of collision with the "Otto" without the necessity of stopping and reversing? The decision of this appeal one way or another depends, in my opinion, upon the answer to be given to that question. I have no difficulty in answering the question in the same way as the learned Judges of the Second Division have practically done. I do not think the master of the "Thorsa" was bound to assume that the "Otto," though she had disregarded his first would pay no attention to his second signal, and would not keep out of the way by going to the starboard. Upon the evidence, which on that point is all one way, I see little reason to doubt, that had the "Otto," after the second signal from the "Thorsa," kept on her course, the vessels would have passed clear of each other. The collision was in my opinion entirely due to the unseamanlike navigation of the "Otto;" and I am therefore of opinion that the judgment appealed from ought to be affirmed.

LORD HALSBURY—I am of the same opinion. There are two vessels practically on opposite courses, both intending to pass the lightship at about the same point; and the only blame that can be properly attributed to the "Thorsa" is that she did not stop and reverse in time to prevent the collision. That of course is a question which must always depend upon the circumstances of the particular case, and I am not helped by any canon which has been laid down beyond this, that people must behave reasonably with respect to the course they are pursuing when they come into proximity to each other, which may be the result of the course they are following. Looking at what the "Thorsa" did, it appears to me that she acted reasonably throughout. There was no reason why she should not keep on the course she was pursuing; and when she gave a signal which was not attended to, and gave a second signal, I think she might calculate that a seaman using ordinary care would attend to it. The time of course becomes very material. So far as I can form a judgment of the time that elapsed, when at last it was apparent to the master of the "Thorsa" that the master of the "Otto" was going to manœuvre as he ought not to have done, the former did what he ought to have done—he stopped and reversed; but it was too late to prevent the collision, which I think was caused by the persistent conduct of the master of the "Otto" throughout.

LORD ASHBOURNE, LORD MACNAGHTEN, and LORD MORRIS concurred.

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

Counsel for the Appellants—Sir Walter Phillimore—Aspinall. Agents—Pritchard & Sons, for J. & T. W. Hearfield & Lambert.

Counsel for the Respondents — Sir R. Webster, Q.C.—Salvesen. Agents—Thomas Cooper & Company, for Beveridge, Sutherland, & Smith, S.S.C.

Friday, June 1.

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

MACFARLANE AND OTHERS (DUNLOP'S TRUSTEES) *v.* THE LORD ADVOCATE.

(*Ante*, vol. xxix. p. 393, and 19 R. 461.)

Revenue — Legacy-Duty — Moveable Estate Directed to be Invested in Land—Entail —"Estate of Inheritance in Possession in the Real Estate"—Act 36 Geo. III. c. 52, secs. 12 and 19.

The Act 36 Geo. III. c. 52, sec. 12, provides—"That the duty payable on a legacy or residue or part of residue of any personal estate given to . . different persons in succession, who shall be chargeable with the duties hereby imposed at one and the same rate, shall be charged upon and paid out of the legacy or residue or part of residue so given, as in the case of a legacy to one person; and where any legacy or residue or part of residue shall be given to . . . different persons in succession, some or one of whom shall be chargeable with no duty, or some of whom shall be chargeable with different rates of duty, so that one rate of duty cannot be immediately charged thereon, all persons who under or in consequence of any such bequest shall be entitled for life only, or any other temporary interest, shall be chargeable with the duty in respect of such bequest in the same manner as if the annual produce thereof had been given by way of annuity."

Section 19 provides—"That any sum of money or personal estate directed to be applied in the purchase of real estate, shall be charged with and pay duty as personal estate, unless the same shall be so given as to be enjoyed by different persons in succession, and then each person entitled thereto in succession shall pay duty for the same in the same manner as if the same had not been directed to be applied in the purchase of real estate, unless the same shall have been actually applied in the