HOUSE OF LORDS.

Thursday, December 9.

(Before the Lord Chancellor (Loreburn), Lord Ashbourne, Lord Atkinson, and Lord Gorell.)

INLAND REVENUE *v.* EDINBURGH LIFE ASSURANCE COMPANY.

(In the Court of Session, March 9, 1909, 46 S.L.R. 499, and 1909 S.C. 847.)

Revenue—Income Tax—Assurance—Annuities Payable Out of Fund, Part of which has already been "Brought into Charge"—Accountability for Tax Deducted from Annuities—Customs and Inland Revenue Act 1888 (51 *and* 52 *Vict. cap.* 8), *sec.* 24 (3).

The annuities granted by a life assurance company were charged upon the whole funds of the company. Its income from interest on investments, dividends, and rents was very much larger than the amount of the annuities, and without this branch of income there would have been a deficit instead of a profit on a year's trading. The income from interest, dividends, and rents was taxed at the source, and the income tax so paid was more than if the company had been assessed on nett profits under Schedule D. In paying the annuities the company deducted the amount of the income tax due in respect thereof, which it retained.

Held that the company was not bound to account to the Inland Revenue for the income tax so deducted.

This case is reported *ante ut supra.*

The defenders, the Edinburgh Life Assurance Company, appealed to the House of Lords.

At delivering judgment—

LORD ATKINSON—In this case the Lord Advocate for Scotland filed an information against the defendant company to obtain an account of the income tax deducted by them from annuities payable by them, and also to recover, on behalf of the Commissioners of Inland Revenue, payment of a sum of £5809, 3s. 7d., alleged to have been deducted by the company in respect of income tax from certain annuities, amounting to £116,259, 13s. paid by them from the 5th of April 1905 to the 30th of November 1907.

The question for decision turns on the true construction of section 24, sub-section 3, of the Inland Revenue Act of 1888.

The defendant company carries on the ordinary business of a life insurance company, including the selling of the annuities, both immediate and deferred. The immediate annuity is purchased by the payment to the company of a lump sum, the deferred annuity either by the payment of a lump sum or of a series of instalments. The income of the company consists of (1) interest on investments, dividends, and rents, a considerable sum upon which income tax is deducted at its source, (2) premiums for life insurances, (3) the purchase money of the annuities, (4) a small sum representing transfer fees, &c.; while the company's outgoings consist of (1) claims on policies, (2) surrenders of policies, (3) annuities, (4) expenses of management, including commissions, (5) income tax, (6) dividends to shareholders.

The financial position of the company is best shown by the result of their operations during the five years ending on the 31st December 1907. Their total receipts during that period amounted to £2,515,113, of which nearly one-third, £804,731, represents interest, dividends and rent, on which income tax is deducted at the source, while their expenditure, including a sum of £207,567, actually ascertained to meet increased liabilities, amounted to £2,170,663, leaving a net surplus of £334,450, so that if the sum of £804,731 were not brought into account, and applied by the company to meet its liabilities, there would be a deficit on the five years' trading of £470,281.

No formal appropriation of the interest from these investments in the books of the company is made, nor is any particular fund set apart, ear-marked, or specially charged with the payment of these annuities, but as the before-mentioned figures demonstrate these annuities must, since they have been paid in full, have been paid in part out of this sum of £804,731 so brought into account. The income of the company from all sources is treated as paid into a common fund, from which all outgoings are discharged. And by the 18th article of the contract of copartnership of the company it is provided, amongst other things, that every policy of insurance or other obligation entered into by the directors for the behoof of the company shall contain a clause declaring that the capital stock and funds of the company for the time being shall be the only fund answerable for any demand under such policy or other obligation.

Such a clause is invariably inserted in these documents as directed by this article.

These facts are not disputed. An account in a particular form had been furnished to the Inland Revenue, and therefore the real object of the action is the recovery of this money demand. From the accounts furnished it is clear that had the company been assessed upon their trade profits for the five years ending the 31st December 1907, the Inland Revenue would have received from them income tax on £334,450, and have received from the annuitants income tax upon £218,463, making together the sum of £552,913. The Inland Revenue did not take that course; they collected the tax upon the company's investment, the company returning its net profits each year under Rule 1, Case 1, of Schedule D, as "nil," with the result that they have already received income tax on a much larger sum—a sum amounting, after deducting the tax, to £804,731—than they would have received had they taxed it on its profit. And if the contention on which their present claim is based be sound, they would be entitled to receive income tax on

the amount of the annuities paid, namely, £218,463, besides, that is, income tax on over £1,023,194, instead of on £552,913. But whether this contention be sound or not, it is obvious that the Inland Revenue have taken the course most profitable for the Crown, and most burdensome to the subject. They cannot assess the company on one basis and call them to account upon another. It is assumed that the company make no net profits, and the Crown must admit that even if the fact were so it would not affect the validity of their claim or the question to be decided.

The Lord Ordinary decided in favour of the company. The Commissioners appealed to the First Division, contending before both tribunals that these annuities could not be treated as in whole or part paid or payable out of gains and profits brought into charge. That contention was rejected by both Courts, but the First Division, by their decree dated the 9th March 1909, found "that the annuities paid by the defenders in every year fall to be debited proportionally against their revenue on which income tax has been paid and their revenue upon which income tax has not been paid in each year," and further, that the defenders were bound to account for the portion of the annuities paid out of revenue which had not paid income tax, and remitted the case to the Lord Ordinary to fix the amount of income due on those findings.

From this decree the company have appealed to your Lordships' House. The respondents now endeavour to support their decree on grounds entirely inconsistent with those on which they relied in the Scotch Courts.

They now admit, as indeed they must admit in order to hold their decree, what before they strenuously disputed, namely, that the income from these investments of the company are "profits and gains brought into charge" within the meaning of the 24th section of the Act of 1888. But they contend that as the annuities are not made a special charge on any particular fund belonging to the company, and are in fact paid out of a mixed fund, the payments must be ascribed to the whole sources of income in the proportions which each source of income bears to the whole income.

It cannot be disputed that the annuities, though not exclusively charged upon this taxed income, are payable out of it in the sense that they are charged upon it, may legitimately and properly be paid out of it, and can be paid out of it in fact as it is ample to meet them.

The case of the *London County Council* v. *The Attorney-General*, A.C. (1901) 26, resembles the present case in this, that Stock A issued by the Council and the dividends upon it, and the sums required to form a sinking fund, were charged upon all the property of the Council together with the rates. It differs from the present case, however, in this, that the income of the Council liable to income tax was less by many thousands of pounds than the interest paid to the stockholders, and it necessarily followed that stockholders to a considerable amount must have been paid out of non-taxed income, namely, the rates.

The case was clearly covered by the concluding portion of the 28th section. The Council were quite willing to pay the income tax deducted on the interest so paid out of the rates, but claimed the right to retain the income tax deducted on the interest paid out of the tax-bearing portion of their income. The claim of the Crown in that case, as originally in this, was based upon the contention that the income of the Council derived from their property as distinguished from the rates was not "gains and profits brought into charge to the income tax payable under Schedule D" within the meaning of section 28; and alternatively in that case, as now in this, that the interest payable to the stockholders was a charge upon a mixed fund comprising the income from their property and the rates, that only portion of that fund could be brought into charge to the income tax under D, and that consequently only a rateable proportion of the dividends on the stock could be treated as payable out of "profits or gains brought into charge."

The decision of your Lordships was against the Crown on both these points. In dealing with the second, Lord Macnaghten, at page 33 of the report, expresses himself thus—"That is an ingenious but not, I think, very businesslike suggestion. It is enough to say it is the plain duty of the Council, not being beneficial owners of the funds which they administer, to keep down annual charges out of annual income as far as it will extend." Lord Davey, at page 46, deals with the latter contention thus—"On the second point it is difficult to express oneself with becoming respect. The contention is that as the interest on their consolidated stock is charged upon the whole lands, rents, and property belonging to the corporation and on their rates, such interest ought for the benefit of the Crown to be apportioned rateably over all subjects of the charge, and only a rateable proportion deemed to be paid from rents or from interest receivable by them by their own debtors. The proposition has the merit of novelty. Admittedly there is no authority for it. The attention of your Lordships has not been called to any statutory enactment directing such procedure or to any principle of law which prescribes it. On the contrary, the general principle of payment in due course is to pay annual charges in the first place out of annual income. It is not required by the Income Tax Acts in order to raise the right of deduction and retention that the interest on annual payment should be exclusively charged or payable out of profits or gains brought into charge. It is enough if the interest is charged upon or payable out of the taxable income, though there may be other subjects of charge."

With this reasoning the other Lords concurred.

The feature which, in addition to the insufficiency of the tax-bearing income to

pay all the claims upon it, distinguishes that case from the present is that there the taxed income had been set apart as a separate fund, and the interest and dividends on which the income tax required to be returned had been paid were in fact paid out of the fund so set apart. The question is whether a manipulation such as that by the company of its funds—a setting apart of less than one-third of their taxed income—to pay these annuities, which they can any day readily accomplish, and which, if done, could not have any effect on their balance-sheet or financial position, is a condition-precedent which must be performed in order to entitle them to retain, under the provisions of section 28 of the Income Tax Act of 1885, the sum deducted and now sued for.

In my opinion, where annuities such as these are charged upon a tax-bearing fund amply sufficient to pay them in full, though not set apart for that purpose, they cannot be held to be "not payable" or "not wholly payable" out of gains and profits brought into charge within the meaning of the 28th section. For the purposes of that section I think that the interest on annuities charged upon the tax-bearing fund must under such circumstances be treated as payable out of that fund so far as it will reach. If the taxed fund be insufficient to pay all the interest and annuities, then the income tax deducted on the interest or annuities not satisfied out of it must be accounted for. In short, I attach no special virtue to the manipulation of the funds of a corporation, in the manner above mentioned, as a means of escape from a liability to pay income tax. To do so would, in effect, be, I think, to lose sight of what appears to me to be one of the main objects, if not the main object, of the section, namely, to avoid obliging a subject to pay income tax twice over on the same sum. That object would, in the result, be defeated, if the subject were obliged first to pay income tax on a given fund, and then to pay income tax on sums properly payable out of it, simply because he had omitted formally to dedicate the fund specially to that use, and formally to pay those sums out of it. On this ground I think the appeal in this case should be allowed. But if I were of a contrary opinion, I should have great difficulty in determining what, for the purposes of the decree, is to be taken to be the "revenue of the company which has not paid income tax," or on what bases it is to be ascertained. The case of *Gresham* v. *Styles*, 1892, A.C. 309, establishes that in order to ascertain what are trade profits for the purposes of taxation under the Income Tax Acts, antecedent to this Act of 1888, annuities, such as these paid in this case, cannot be treated as paid out of profits and gains "brought into charge" to the tax; and, *è converso*, that the amount paid by the annuitant in respect of them, that is, the amount paid to purchase them, whether in a lump sum or by instalments, cannot be taken in its bulk as such "profits or gains" either, but that the expenditure, including these annuities, must be deducted from the receipts to ascertain the net profits, upon which alone income tax is to be levied. In this case the company has been taxed on the assumption that its net profits are nil; and it is admitted that section 28 is merely a machinery section, neither extending existing charges nor imposing new ones. The rates levied by the London County Council bear no analogy whatever to the sums paid to purchase these annuities, nor, indeed, it would appear to me, to the premiums on ordinary policies of life insurance either. The rates are income in the ordinary sense. The price received by a trader for the goods he purchases and then vends is to a great extent capital, and is not to be treated as income, or "gains and profits," for the purposes of the Income Tax Act; yet by the decree the annuities are to be apportioned between receipts, in their nature portions of capital, and the income from investments, as if they were two ascertained portions of revenue, as distinguished from capital, income tax being leviable on the one and not on the other; while it is admitted that these receipts might be very considerable, and yet the net profits made by the trading, apart from the income from investment, be nothing or less than nothing. In the view I take on the other points raised it is unnecessary for me to determine what is the true principle upon which the account directed should be taken, but I own, with all respect to the learned Judges of the First Division, I think great injustice might result from the application of the principle on which the decree appears to be based.

As I have already said, I think this appeal should be allowed with costs against the Crown.

LORD GORELL—The facts which give rise to the question in this case are simple. The appellants carry on the ordinary business of a life insurance company, including, *inter alia*, the selling of annuities, both immediate and deferred. An immediate annuity is purchased by a single payment of a lump sum; a deferred annuity may be purchased either by a single payment or by a series of instalments. The revenue of the company consists of (1) interests on investments, dividends, and rents, (2) premiums for life insurances, (3) consideration money for annuities, and (4) a small sum representing assignments and transfer fees and other miscellaneous receipts. Its outgoings consist of (1) claims under policies, (2) surrenders, (3) annuities, (4) commission and expenses of management, (5) dividends to shareholders, (6) income tax.

The interest, &c., which the company receives from its investments forms a large portion of its revenue, and but for it there would be a large annual deficit. From this interest, &c., income tax is deducted at the source, and it is not included by the company in arriving at the balance of profits and gains for the purpose of direct assessment under the Income Tax Acts under Case 1 of Schedule D. The company therefore returns its profits and gains as nil, and the return has been accepted by the Income

Tax Commissioners. The income tax deducted from the interest, &c., on the investments largely exceeds the amount which would be yielded by an assessment on the profits as a trading concern.

In paying the annuities for which they are liable the company deduct income tax at the proper rate. The annuities paid for the period from 5th April 1905 to 30th November 1907 amounted to £116,259, 13s., and the income tax deducted by the company on payment of these annuities amounted to £5809, 3s. 7d.

The respondent brought the present suit by summons on the 18th June 1908, to recover the latter sum from the appellants, on the ground that under the Income Tax Acts the appellants are bound, as the Commissioners of Income Tax allege, to pay this sum to the Crown; whereas the appellants claimed to retain it, on the ground that the annuities were payable and had been paid out of profits and gains already brought into charge for income tax.

It will be convenient here to show the position of the appellants with regard to the annuities by a reference to their operations for the quinquennial period ending 31st December 1907. During that period their total receipts were:—

Premiums	£1,529,502
Consideration for annuities .	178,074
Assignment and transfer fees .	684
Profits on investments realised .	2,122
	£1,710,382
Interest, dividends, and rents .	804,731
Total . . .	£2,515,113

The total expenditure was £1,973,096, of which expenses of management amounted to £168,204 and annuities paid to £218,463. In addition there was a sum of £207,567 in respect of increased liabilities actuarially ascertained, which with the £1,973,096 made a total of £2,170,663, so that the surplus of receipts over expenditure was £334,450. If the sum of £804,731 for interest, dividends, and rents were not brought into account there would have been a deficit of £470,281.

The Lord Ordinary by interlocutor of the 30th July 1908 assoilzied the appellants from the conclusions of the summons, but on appeal the First Division of the Court of Session decided the case on a ground which was not put forward by the Crown either before the Lord Ordinary or in the Inner House. They held that the annuities paid by the appellants in any year fall to be debited proportionally against their revenue on which income tax has been paid and their revenue on which income tax has not been paid in each year; and that the appellants were bound to account to the respondent for income tax on the portion of the annuities thus paid out of revenue which had not paid income tax; and they remitted to the Lord Ordinary to fix the amount of income tax due in terms of their findings.

The effect of this judgment, if it be applied to the quinquennial period above mentioned, will be that the appellants must apportion the sum of £218,463 paid by them to their annuitants rateably between (1) the £804,731 of interest, dividends, and rents on which they paid income tax, and (2) the rest of their receipts, amounting to £1,710,382, on which income tax has not been paid, and therefore, although they have paid income tax on the sum of £804,731, they would have to pay to the Crown in addition rather more than two-thirds of the income tax deducted by them from the annuities paid by them.

The appellants appeal against this decision, and seek to have the interlocutor of the Lord Ordinary restored. There is no cross appeal, and therefore the question is whether the appellants are entitled to retain the whole of the income tax deducted by them from the annuities paid by them or only a portion thereof, to be ascertained by the method above stated.

The question depends upon the meaning and effect of section 102 of the Property Tax Act 1842, section 40 of the Property Tax Act 1853, and section 24, sub-section 3, of the Customs and Inland Revenue Act 1888. I need not trouble your Lordships by a full statement of these sections and of their operation, because I find on reading the judgments delivered in the case of the *London County Council* v. *The Attorney-General*, L.R. 1901, A.C. 26, to which your Lordships were referred in the course of the arguments in the present case, that Lord Macnaghten has examined these sections very fully. At pp. 38-40 he points out how they authorise a person who has paid income tax on what is not really available income, because it includes money which he has to pay over to some one else, to deduct and retain the tax upon that payment.

To understand the effect of section 24, sub-section 3, of the Act of 1888, which was so much discussed in argument before your Lordships, it is necessary to refer back to section 102 of the Act of 1842, which charges with tax "all annuities" and other annual payments "whether they are payable . . . as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract." Then follows the proviso that "in every case where the same shall be payable out of profits or gains brought into charge by virtue of this Act no assessment shall be made upon the person entitled to such annuity, interest, or other annual payment, but the whole of such profits or gains shall be charged with duty on the person liable to such annual payment without distinguishing such annual payment, and the person so liable to make such annual payment, whether out of the profits or gains charged with duty, or out of any annual payment liable to deduction, or from which a deduction hath been made, shall be authorised to deduct out of such annual payment at the rate of," &c. It will be seen further on in the section that in cases where the annual payment was not payable out of profits or gains brought into charge the payment was charged in the hands of the recipient. The change

made by section 40 of the Act of 1853 is explained in the judgment referred to. Deduction of the duty was authorised in the case of every annual payment either as a charge on any property or as a personal debt or obligation by virtue of any contract.

Section 29, sub-section 3, of the Act of 1888 made the deduction compulsory in all cases, and the person making the annual payment is bound to account to the Crown for the amount deducted, unless the annual payment is payable out of profits or gains brought into charge.

The first question, then, in the present case is whether the annuities were payable by the appellants out of profits or gains brought into charge.

The form of annuity bond granted by the appellants is given in the record, and according to this the funds of the company and the capital stock so far as not paid up at the time are alone answerable for any claim or demand under or by means of an annuity bond.

The funds of the company, according to the articles of copartnership, are the paid-up capital, and sums appropriated to the proprietors by way of profit, and the interest, dividends, and accumulations thereof. They also include all premiums and other sums to be received for assurances, &c., and the interest, dividends, and accumulations thereof respectively, which are to form a separate fund called "the Assurance and Annuity Fund," which fund is to be in the first instance the fund for answering all claims and demands on the company in respect of its assurances or otherwise, and for defraying the expenses of carrying on the business of the company.

The annuities are in my opinion payable, within the meaning of the Acts, out of the interest, dividends, and rents received by the company from which income tax is deducted before the moneys are received by the company. They are payable out of profits or gains brought into charge by virtue of the Acts. But they are not payable out of these profits and gains exclusively, and the question appears to be whether that prevents the company from having the right of deduction and retention to the extent which they claim.

The contention was raised in the case above referred to that as the interest on Metropolitan stock was charged on all the property of the Council—capital and income alike—and on their rates such interest ought for the benefit of the Crown to be apportioned rateably over all the subjects of the charge, and only a rateable proportion deemed to be paid out of income from rents or from interest received by them from their own debtors. This contention was rejected. Lord Davey said—"The general principle of payment in due course of administration is to pay annual charges in the first place out of annual income. It is not required by the Income Tax Acts in order to raise the right of deduction and retention that the interest on annual payments shall be exclusively charged upon or payable out of profits or gains brought into charge. It is enough if the interest is charged upon or payable out of the taxable income, though there may be other subjects of charge. But the mortgagor cannot, of course, retain against the Crown more income tax than he has paid. One of the learned Judges in the Court of Appeal seems to have thought the case might be different if the County Council had made some appropriation of their funds, though it is difficult to see how any account-keeping by the debtor could alter the rights of the Crown." The point there decided, upon which these remarks were made, no doubt was affected by the difference between capital and income, in due course of administration, but when the terms of the Acts and the object to be effected are considered in relation to such a case as the present, it would seem that the principles indicated in that judgment should also apply where money, out of which annual payments are payable, is derived from two sources, that coming from one being charged with income tax, while that coming from the other is not so charged.

The Acts are drawn in general terms to meet various cases, but their application which is thus suggested to the present case produces the result which would seem to have been intended to be reached in such cases by taxing at the source; for although the £804,731 for interest, dividends, and rents is not really available income, the Crown receives the tax on the whole of that sum, and the company only get back the tax on £218,463. If they also have to account for the tax on rather more than two-thirds of the latter sum, there will be a payment twice over on that account. There does not seem to be any authority applicable to this case for the proposition on which the learned Judges of the First Division acted, that because there are two funds practically charged with the payment of the annuities the liabilities must be apportioned rateably between them. The appellants may pay the annuities out of which funds they please, and the question of their rights and liabilities with regard to the Crown must depend on the sections of the Acts above referred to, according to which the tax may be deducted and retained, although the annuities are not payable exclusively out of the taxable income of the company.

But then it was argued for the respondent that it has not been shown that the annuities have been paid out of the taxable income. This argument would seem to make the rights of the Crown depend upon the bookkeeping of the company; but this cannot be; nor do I think the liabilities of the company can be made to depend upon their system of accounts. This argument could hardly be open if the company had, in fact, kept the interest, dividends, and rents from their investments apart from their other moneys, and paid the annuities out of the former. Can it then make any difference to their rights and liabilities if they choose to mix the funds for the purpose of their accounts and pay thereout whatever

sum is necessary to discharge their liabilities to the annuitants?

It may be that, as Lord Macnaghten said in the above case, at page 34, in commenting on the change of language in section 24, sub-section 3, of the Act of 1888, from "payable" to "paid," "so far as interest of money or annuities chargeable under Schedule D are in fact paid out of profits or gains 'brought into charge,' whether in law payable thereout or not, the person who makes the payment and deducts the rate of income tax is not accountable to the Crown for the duty deducted." But it does not appear to me to follow that where the annuities are payable out of profits or gains brought into charge it is necessary to use in paying the annuities the actual moneys received in respect of the profits or gains in order to obtain the benefit of the deduction and retention. In the case of a business like the appellants', and taking into account the language and object of the three Acts, it seems to me that if the annuities are made payable out of the interest, dividends, and rents charged with the tax, it is immaterial whether the money to pay them is taken out of the general till of the company or not, provided that it does not exceed the amount of income on which tax is charged.

I am of opinion that the appeal should be allowed, and the interlocutor of the Lord Ordinary restored, with costs here and in the First Division.

LORD ASHBOURNE—In this case I concur in the opinions which have been delivered by my noble and learned friends.

LORD CHANCELLOR—I agree.

Their Lordships reversed with expenses the order appealed against.

Counsel for the Pursuer (Respondent)—Attorney-General (Sir W. Robson, K.C.)—Lord Advocate (A. Ure, K.C.)—Umpherston. Agents—P. J. Hamilton Grierson, Solicitor of Inland Revenue, Edinburgh—Sir F. C. Gore, Solicitor of Inland Revenue, London.

Counsel for the Defenders (Appellants)—D. F. Scott Dickson, K.C. — Sir R. B. Finlay, K.C. — Macphail. Agents — Mackenzie & Kermack, W.S., Edinburgh—C. Myles Barker, Solicitor, London.

Tuesday, December 14.

(Before the Lord Chancellor (Loreburn), Earl of Halsbury, Lord Atkinson, Lord Gorell, and Lord Shaw.)

KERR *v.* SCREW COLLIER COMPANY, LIMITED.

(In the Court of Session, January 23, 1909, 46 S.L.R. 338, 1909 S.C. 561.)

Ship—Collision at Sea—Narrow Channel—Firth of Forth—Regulations for Preventing Collisions at Sea 1897, *Art.* 25—*Merchant Shipping Act* 1894 (57 *and* 58 *Vict. cap.* 60), *sec.* 418.

"The Forth from the Forth Bridge upwards is a narrow channel in the sense of Article 25 of the Regulations for Preventing Collisions at Sea."

This case is reported *ante ut supra.*

The defenders appealed to the House of Lords against the interlocutor of the First Division reversing the judgment of the Lord Ordinary.

At the conclusion of the argument for the appellants—

LORD CHANCELLOR—I think it is quite clear that this judgment of the First Division ought to be affirmed. It is admitted that the "Prudhoe Castle" was to blame. It is suggested on the part of the "Prudhoe Castle" that the "Ruby" also was to blame in three particulars. In the first place, it is said that she did not keep a proper look-out. I am not sure that that is established, but it certainly is not established that, if it were so, that in any degree contributed to the collision. Then it is said that she ported when green to green, at a wrong time. It was clearly her duty to port at the proper time, and all the evidence taken as a whole seems to me to show that she did so—that she steered a proper course and ported at the right time.

I have only further to observe that this must undoubtedly be regarded as a narrow channel. It seems very strange that there should be any doubt upon the subject, and I hope it will be clearly understood that in the opinion of your Lordships this is a narrow channel.

It is quite unnecessary for me to go through the evidence, which has been most carefully sifted for us by the Dean of Faculty, because I agree with the criticisms and the judgment of the Lord President, and I cannot really usefully add anything upon the details to the opinions of the learned Judges.

EARL OF HALSBURY—I concur with what the Lord Chancellor has said.

LORD GORELL—I concur with what has been said by my noble and learned friend on the Woolsack.

I would only like to add this remark from my own point of view. I think it is perfectly clear that the collision occurred in a narrow channel, and that it occurred on the north side of that channel, and