for the appellants was that probate was simply a condition imposed by law upon the obtaining of a title to administer. That may quite well be, but the payment of estate duty not the less appears to me to be now set up not only on a similar occasion but even as a similar condition. In the instance under consideration the appellants in this case by their affidavit for Inland Revenue, dated the 1st August 1897, state—"We desire to obtain the probate of the will of the above-named William Louis Winans." This is exactly what would have had to be done prior to the Act of 1894 if the probate duty alone had been exigible, and as section 6 (2) says that the executor "shall pay the estate duty . . . on delivering the Inland Revenue affidavit," it appears to me that something closer than the analogy to the probate duty has been reached, namely, that payment of the estate duty is made a peremptory condition of probate. I may add that I think that this conclusion is confirmed by subsequent portions of the Finance Act 1894, and in particular by the elaborate provisions of section 8. I respectfully agree with the result of the judgment of the Court of Appeal.

Appeal dismissed.

Counsel for Appellants — Danckwerts, K.C.—Lush, K.C.—Willoughby Williams. Agent—E. H. Quicke, Solicitor.

Counsel for Respondent — Attorney-General (Sir W. Robson, K.C.)—Sir R. B. Finlay, K.C.—Austen-Cartmell. Agent—Solicitor of Inland Revenue.

HOUSE OF LORDS.

Wednesday, December 8, 1909.

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

ATTORNEY-GENERAL *v.* TILL.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue—Income Tax—True and Correct Statement of Profits—Negligent Delivering of False Statement—Penalty—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *secs.* 52, 55.

Delivery of an incorrect statement of profits and gains under the Income Tax Act 1842, sec. 52, although without fraud, renders the deliverer liable to the penalty for non-deliverance of a true and correct statement under sec. 55, if he has made the statement negligently and not to the best of his knowledge and belief.

The respondent had delivered an incorrect statement of profits under the Income Tax Act 1842. Under the circumstances stated in the opinion of Lord Gorell, he was found liable by LORD ALVERSTONE, C.J., and a jury for the penalty imposed by section 55 for non-delivery of a correct statement. This judgment was reversed by the Court of Appeal (COZENS-HARDY, M.R., MOULTON and BUCKLEY, L.JJ.).

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I hold that this appeal should be allowed, and in view of the exhaustive criticisms to which your Lordships have subjected these somewhat obscure sections I will only say a few words. I attach great importance to the rule that unless penalties are imposed in clear terms they are not enforceable. Also, where various interpretations of a section are admissible, it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive. After listening attentively to the argument and considering the 55th section both by itself and in connection with other parts of this and other Acts to which we were referred, I have come to the conclusion that neither canon is violated by the contention of the Crown. When the 55th section enacts "that if any person who ought by this Act to deliver any list, declaration, or statement as aforesaid, shall refuse or neglect so to do within the time limited in such notice," he shall be liable to a penalty, surely it means that he must either be liable to the penalty or must do what by the Act he ought to do as to the delivery of the list, declaration, or statement. What he ought to do is described in the preceding sections, and among them is section 52, which requires him to deliver "a true and correct statement in writing." If he does not deliver a true and correct statement, or if he does not deliver any statement at all, he in either case equally fails to do what he ought to do under the Act. I confess that the distinction sought to be drawn between the use of the words "any statement" and the possible but not adopted use of the words "such statement" seems to me to take more account of grammar than of substance. If the latter words had been used the meaning of the section would, it is true, have been incontestable. As it is I think that it does not offend against grammar and is sufficiently clear and would have been so regarded but for the fact that with a severe precision in the use of language the thought underlying the words might have been still more plainly expressed. Lord Gorell has adduced additional reasons from the other contents of this, and from the contents of other sections, fortifying this conclusion, and I will not dwell upon them. They seem to me very cogent. Mr Till, however, argued that upon this view a very hard penalty may fall upon a person who without any fault on his own part makes a statement incorrect even in a small particular; and he urges that it is no answer to say that the Crown would never use such a power. I entirely agree with him that such an answer could not prevail. But I do not think that it is true that an innocent mistake exposes a man to

these penalties. The Act appears to have been framed in full view of the conditions under which the income tax has to be collected. On the one hand, hundreds of thousands, if not millions, of people are required to make returns. It is necessary, therefore, that there should be a sharp weapon available in order to prevent the requirements of the Act from being trifled with. On the other hand, the making of the return or statement is not always easy, and mistakes may occur notwithstanding that care may have been used to avoid them, still more when proper care has not been used. Accordingly provision is made for penalties which are to fall in the event either of unpunctuality or of inaccuracy in the return or statement required. But alongside of that are to be found provisions to relieve a man from the penalty if he mends his mistake. In the present case this result could be secured by section 129. I see nothing either harsh or unreasonable in this. A fair balance is held, and while the Revenue is protected against procrastination and carelessness, which if practised on any large scale would make the collection of the tax an intolerable business, anyone who though honest has been neglectful may redeem his neglect. In regard to the argument that upon this construction the penalty for incorrectness is more heavy than are other penalties for more serious disobedience, I am not satisfied that it is so, or at all events that it is conspicuously so; but I do not pursue the subject, for I think that it does not signify whether it be so or not. I am in a sense sorry for Mr Till, because he has evidently persuaded himself as well as the Court of Appeal that he has found a loophole of escape from the contention of the Crown, and he will have to pay dearly for his error. It seems to me, however, that he has been trifling with a thoroughly just claim, and cannot complain that the Crown should put in force against him, though no charge can be made or is made of any dishonesty, the penalty prescribed for exactly this kind of conduct.

LORD ATKINSON—I have had the advantage of reading the judgment which Lord Gorell is about to deliver, and I concur in the conclusion at which he has arrived, and in the reasoning by which he has arrived at it. Like him I think that the appeal should be allowed, but I do not think that the contention of the Crown, as I understood it, is well founded, namely, that any taxpayer who sends in a statement of the gains and profits earned by him in his trade or business, as required by section 52 of the Income Tax Act 1842, which statement is erroneous in fact, necessarily becomes liable to the penalties imposed by section 55 of that statute. With all due respect to the Court of Appeal, it would appear to me that, finding themselves confronted with this contention, they allowed themselves to be too much influenced by the quite natural repugnance which one must necessarily feel against adopting a construction of these enactments which would render the subject liable to those very heavy penalties if, while honestly endeavouring to furnish a correct statement according to his lights, he made some mistake, or was guilty of some error in estimating what his gains and profits amounted to. I do not think that the provisions of the statute are as unjust and oppressive as that. It is only necessary to read the last six lines of the first part or paragraph of section 52 to see that the amount of the gains and profits to be stated is an estimated amount, and the estimate is to be made for the period and according to the rules contained in the respective schedules to the Act. Many persons might find a difficulty in applying those rules, and it is scarcely conceivable that the Legislature should have intended that a person who estimated the amount of his gains and profits to the best of his judgment and belief, according to those rules, should be liable to the penalties imposed by section 55 if he should not apply them with perfect accuracy and his estimate should consequently be incorrect. That this is so is shown by reading section 190. That section provides that "The schedule marked G, with the rules and directions therein contained, shall, in making the returns of the amount of annual value or profits upon which duty is chargeable under the Act so far as the same are applicable to each person," be observed by the persons making them. One of the rules applicable to the declaration of a person returning a statement of profits under Schedule D is rule 15. It provides that the person shall declare the truth of the statement, and that the profits are fully stated upon every description of property appertaining to the declarant "estimated to the best of his judgment and belief according to the directions and rules of the Act." If in making this estimate he applies those rules and directions according to the best of his judgment or belief he is not liable to these penalties though he may perchance have fallen into error. I do not think that there is anything in section 129 inconsistent with this construction of section 190. If a person discovers that the statement which he has lodged, though framed according to the best of his judgment and belief at the time when he made it, is wrong in fact, he might be guilty of a fraud upon the Revenue if he allowed himself to be assessed on an estimate which he subsequently discovered to be erroneous. Accordingly section 129 provides that when he discovers any defect or wrong statement in the statement which he has delivered he may correct it. No doubt the words "and such person shall not afterwards be subject to any proceedings by reason of such omission or wrong statement" would seem to suggest that he would be liable if he had made a statement not true in fact, though true and accurate according to his belief; but I do not think that this is enough to override the express words of section 190 and the rules. In this case the question left to the jury was not framed precisely as it should have been.

They should, in my opinion, have been asked whether in their opinion the respondent in making his return applied the rules in the schedule according to the best of his judgment and belief. They have found, in answer to the question left to them, that he was guilty of negligence in framing his statement, which must, I think, be taken to be a finding that he did not estimate his gains and profits "to the best of his judgment and belief according to those rules." His statement was admittedly incorrect, and having regard to this finding I think that he became liable to the penalty sued for. The judgment of the Court of Appeal was, in my opinion, wrong and should be reversed, and this appeal should be allowed, with costs.

LORD GORELL—The appeal in this case is from a judgment of the Court of Appeal, dated the 17th February 1909, allowing an appeal by the respondent from a judgment of Lord Alverstone, C.J., dated the 10th July 1908, and ordering judgment to be entered for the respondent, with costs of the appeal to the Court of Appeal and of the trial in the King's Bench Division. The judgment of the Lord Chief-Justice was for the present appellant for £50 and costs upon an information filed against the respondent under the Income Tax Act 1842. The case raises a point of law upon the construction of section 55 of the Act, and it is unnecessary for its determination to set out the facts except so far as to state that in April 1907 proceedings were instituted by the Attorney-General against the respondent for not sending in a correct return of his profits and gains as a solicitor for assessment of income tax, under Schedule D of the Act of 1842, which is kept in force for the year of assessment in the case by the Finance Act 1895. Section 6, sub-section 2, of the latter Act puts in force all such enactments relating to income tax as were in force on the 5th April 1895, including the Act of 1842. The return in question was made by the respondent on the 20th May 1905, and was less by a sum of £200 than it should have been, under circumstances which have been detailed in the evidence. It was admitted at the trial that the return was incorrect. There was no suggestion that it was fraudulently made, but the jury found that there was neglect on the part of the respondent. The Lord Chief-Justice followed the decision of the Scottish Court in the case of *Lord Advocate* v. *Sawers* (35 S.L.R., 190; 3 Tax. Cas., 617), but the Court of Appeal differed from the conclusion arrived at in that case. The question turns mainly on sections 52 and 55 of the Act of 1842, but as leading up to those sections it will be convenient to refer to a few of the earlier sections. Under section 47 the assessors are to fix general notices on church doors, &c., requiring all persons who are by the Act required to make out and deliver any list, declaration, or statement, to make out and deliver the same as directed within a limited time. Under section 48 the assessors have to deliver to or at the houses of persons chargeable with duties notices requiring them to prepare and deliver as directed all such lists, declarations, or statements as they are respectively required to deliver by the Act within a limited time, and in case of refusal or neglect to comply with the requirement "then the Commissioners shall forthwith issue a summons under their hands to such person making default as aforesaid in order that the penalty for such refusal or neglect may be duly levied; and the said Commissioners shall, moreover, proceed to assess or cause to be assessed every person making such default in manner herein directed." Section 49 merely prescribes the place of delivery. Section 50 requires every person when required as prescribed to prepare and deliver a list in writing containing "to the best of his information and belief" the names of lodgers, inmates, and others, &c., provided that no person shall be liable to the penalties thereinafter mentioned for any omission of the name or residence of any person in his service or employ and not resident in his dwelling-house, if it shall appear to the Commissioners that such person is entitled to be exempted from duty. Section 51 requires every person acting for another to prepare and deliver a list in writing in such form as the Act requires, signed by him, containing "a true and correct statement" of the particulars mentioned in the section, in order that the duty may be duly charged. Section 52 provides that every person chargeable under the Act shall when required so to do, whether by any general or particular notice given in pursuance of the Act (that is, under sections 47 or 48), within the period to be mentioned in such notice as aforesaid, "prepare and deliver to the person appointed to receive the same, and to whom the same ought to be delivered, a true and correct statement in writing in such form as the Act requires, and signed by the person delivering the same, containing . . . the amount of the profits or gains arising to such person from all and every the sources chargeable under the Act according to the respective schedules thereof, which amount shall be estimated for the period and according to the respective rules contained in the respective schedules of the Act, and to the statement is to be added a declaration that the same is estimated on all the sources contained in the said several schedules describing the same after setting against or deducting from such profits and gains such sums, and no other, as are allowed by the Act, and every such statement is to be made exclusive of the profits and gains accrued or accruing from interest of money or other annual payment arising out of property of any other person for which such other person ought to be charged by virtue of this Act." It may here be noticed that by section 190, Schedule G and the rules therein are to be observed in executing the Act, and that rule 15 requires a general declaration by each person returning a statement of profits under, *inter alia*,

Schedule D, declaring the truth thereof, and that the same is fully stated on every description of property or profits included in the Act relating to the said duties and appertaining to the party, estimated to the best of his judgment and belief, according to the directions and rules of the Act. It will be seen that section 52 imposes a statutory duty on the person chargeable to do three things—to prepare the statement, to sign it, and to deliver it; and further, it is to be true and correct, but this may well be in the sense prescribed by rule 15 of Schedule G. The respondent's statement was not true and correct in any such sense, for the finding of the jury disposed of any suggestion that the estimate had been made to the best of his judgment and belief. Section 53 imposes on a trustee or agent of a person incapacitated or not resident in Great Britain the duty of delivering a true and correct statement in writing, signed by the trustee or agent, of the amount of the profits or gains to be charged on him on account of such other person. The duty thus imposed receives a qualification in favour of trustees by reason of the latter part of section 55. Section 54 imposes on officers of corporations the duty of preparing and delivering true and correct statements of the profits and gains to be charged, estimated on the annual profits before dividend made. Section 55 is as follows:—"That if any person who ought by this Act to deliver any list, declaration, or statement as aforesaid shall refuse or neglect so to do within the time limited in such notice, or shall under any pretence wilfully delay the delivery thereof, and if information thereof shall be given, and the proceedings thereupon shall be laid before the Commissioners acting in the execution of this Act, every such person shall forfeit any sum not exceeding £20 and treble the duty at which such person ought to be charged by virtue of this Act, such penalty to be recovered as any penalty contained in this Act is by law recoverable, and the increased duty to be added to the assessment, but nevertheless subject to such stay of prosecution or other proceedings by a subsequent delivery of such list, declaration, or statement, in the case following, that is to say, if any trustee, agent, or receiver, or other person hereby required to deliver such list, declaration, or statement on behalf of any other person, shall deliver an imperfect list, declaration, or statement, declaring himself unable to give a more perfect list, declaration, or statement, with the reasons for such inability, and the said Commissioners shall be satisfied therewith, the said trustee, agent, or receiver, or other person as aforesaid, shall not be liable to such penalty in case the Commissioners shall grant further time for the delivery thereof, and such trustee, agent, receiver, or other person shall within the time so granted deliver a list, declaration, or statement, as perfect as the nature of the case will enable him to prepare and deliver, and any person who shall be prosecuted for any such offence by action or information in any of Her Majesty's courts, and shall not have been assessed in treble the duty as aforesaid, shall forfeit the sum of £50." This section is ill-expressed, so much so that the part of it which relates to trustees, &c., is confused and involved to a degree which renders it almost unintelligible. It was contended by the respondent that the section applies only to non-delivery of a statement at all, as distinct from delivery of an untrue and incorrect statement, and this contention has been accepted by the Court of Appeal. As I understand the judgments, they are based on three main grounds, namely, that the wording of the section is not such as to impose in plain terms a penalty in the latter case; that to hold that it does so would have the result that any error or omission, however slight or however innocent, would involve liability to the penalty, and that this cannot have been intended; and that other sections in the Act show that the penalty is confined to cases of non-delivery. In approaching the consideration of the meaning of the section, I think that it may be observed that when a statutory duty is imposed by a section immediately preceding a penal section it is not unreasonable to expect to find that the sanction is co-extensive with the duty the performance of which is required. The question then is, whether that is so in the present case. First, with regard to the language of the section, it will be noticed that the section relates not only to section 52, but to several other of the sections above mentioned, in two of which—sections 48 and 50—penalties are expressly referred to, and this reference must, I think, be to the penalties imposed by section 55. Section 48 deals with non-delivery and its consequences, and in section 50 the reference to penalties is clearly in cases where there has been delivery of a list and an omission therefrom. It would seem therefore that section 55 was intended to impose penalties for breaches of the duties imposed and not merely for non-delivery. The controversy appears to be caused by the omission of the word "such" after the word "any" in the first line of the section, and the consequent puzzle as to what the words "as aforesaid" relate to, that is, whether to the verb or the nouns, or, in other words, only to mere failure to deliver within the proper time, whether by refusal or neglect, or also to failure to deliver that which according to the duty imposed ought to be delivered. In my opinion it is reasonably clear that the word "such" has been inadvertently omitted, and that the section should be read as if it were inserted. This word is found inserted twice a little later on in the section which runs "but nevertheless subject to such stay of prosecution or other proceedings by a subsequent delivery of such list, declaration, or statement in the case following, that is to say if any trustee, agent, or receiver, or other person hereby required to deliver such list," &c. The word "such" in these two places must, I think, clearly relate to that which has to be delivered according to the previous sections. The frame and object of the sections

which are to compel the necessary disclosure for the purposes of taxation seem to me to show that the construction contended for by the respondent is unreasonable. I may refer to and adopt the language of Lord Stormonth Darling in *Lord Advocate* v. *Sawers* (*cit.*), where he says—"If a man were to put in a piece of blank paper and call it a statement, or if he were to lodge a statement flagrantly and extravagantly deficient or incorrect, then according to the argument of the defender he would be exempt from prosecution, at all events under section 55. The reasonable reading of section 55 is that if there is a failure to deliver the kind of statement required by section 52, either by failure to deliver any statement at all or by delivery of a statement which is untrue or incorrect, then the penalty is incurred and may be recovered in the prescribed manner." Then again the insertion of the provision in favour of trustees, &c., whatever its true reading may be, shows that the section is not dealing only with mere failure to deliver. If the earlier part of the section dealt only with such failure, there is no adequate reason why a trustee or agent should be specially dealt with; but there is such a reason if he be required under penalty to deliver a true and correct statement, for he may not have the same means of furnishing accurate particulars of another person's income as he would have had if he were preparing a statement of his own. I agree with the Lord President in the aforesaid case, who considered that "the necessary implication of the provision is that a trustee who gives in an incorrect statement would be liable to the penalty but for the relaxation which is enacted in his favour, and the implication necessarily applies to everybody else as well as to a trustee." Next, with regard to the argument that this construction would give rise to much hardship, because then any error or omission, however innocent, would involve liability to the penalty, and that therefore it would be unreasonable so to construe the section, I confess that I should not be satisfied, without further argument addressed to this point, that the penalty would be incurred in such a case. It may be that if a statement is made to the best of the declarant's judgment and belief, according to the directions and rules of the Act, he is not liable to a penalty merely because there is an innocent error or omission; but that is not the case before your Lordships, where a return has been made negligently. It is not necessary, in my opinion, to decide any such point in this case. Moreover, it is difficult to suppose that the Crown in such a case would seek to impose a penalty, and even if the attempt were made, the relieving section (129), upon which I will comment further on, would come into play. Further, it was not disputed that a person neglecting to deliver a list, declaration, or statement would be liable to the penalty if the delivery did not take place within the time limited for the purpose; so that the penalty might, but for the relieving section, be imposed if the delivery took place a day too late, and this might prove to be a greater hardship than the imposition of a penalty for incorrectness. I should expect that common experience would show that these hardships do not occur in practice, and that unless there be some contumacy or improper attempt at evasion difficulties are not usually raised. Then with regard to the inference, if any, to be drawn from the other sections of the Act upon which the respondent relied, many of which are commented on in the judgment of the Court of Appeal, I am unable to find that they afford any clear support to his argument. His principal point was that some of these imposed penalties for offences graver than the mere delivery of an incorrect statement, and yet the penalties were less severe for those offences than that imposed in the case of such delivery, if the contention of the Crown be correct. But this does not necessarily lead to the conclusion that the construction which the Crown supports cannot and ought not to be placed on the section, and it does not follow that because there are other provisions, notably, those in sec. 178, against fraud and evasion, that the section in question is to receive a construction different from that which ought, according to its terms, to be placed upon it. One important section requires some further examination—namely, sec. 129. This section is also badly drafted. It may perhaps be doubted whether it applies only to the sections immediately preceding, but it comes in the category of sections relating to Schedule D, and, in my opinion, covers the case of a statement to be made and delivered according to the provisions of sec. 52. It refers to both statements and schedules, but I need not refer to the latter in stating its effect. The first part deals with the case of a person who shall have delivered a statement, and shall discover any omission or wrong statement therein, and makes it lawful for him to deliver an additional statement or schedule rectifying such omission or wrong statement, and such person shall not afterwards be subject to any proceeding by reason of such omission or wrong statement. It seems to be a necessary implication that but for the delivery of such additional statement he would be liable under section 55 for having delivered an untrue or incorrect statement, and therefore that that section should be construed as is contended for by the Crown. It then deals with the case in which a person shall not have delivered a statement within proper time, and permits him to deliver a statement at any time before proceedings have been taken to recover the penalty, and thus to avoid proceedings. Its terms then seem to become general, and provide that if proceedings shall be actually had before the Commissioners to recover the penalty, they may, on proof to their satisfaction that no fraud or evasion whatever was intended, stay such proceedings on terms as to costs. And if proceedings have been commenced in any Court the Commissioners may certify that in their judgment no fraud or

evasion was intended by the party making such omission, and a judge of such Court may stay the proceedings on such terms as he shall think fit. It then deals with the case of the delivery of an imperfect statement, and provides for time being given by the Commissioners if they are satisfied by sufficient reasons that a perfect statement cannot be delivered, and for relief against penalties if as perfect a statement be delivered as from the nature of the case can be given. I am unable to agree with the view that those parts of the section which deal with cases in which proceedings have been commenced relate only to cases in which there has been no delivery of a statement at all. This view seems to be partly derived from the use of the word "omission" in the latter half of the section, which, when the terms of the whole section are considered, appears to be used to cover omission to deliver at all, and omission to deliver a proper statement. The section was evidently framed in order to give persons power to make a delivery and to make amendments, and although it is ambiguously worded, I think that the reasonable meaning to give to it is that it permits the exercise of the powers conferred by it, in proper cases, both before and after proceedings, and both in respect of non-delivery and delivery of an incorrect statement, so as to mitigate hardships which might otherwise occur. Two further points were made in argument by the respondent before your Lordships—that the powers of surcharge given by section 161 of the Taxes Management Act 1880, section 63, *et seq.*, ought to have been exercised so as to permit of relief from penalty, and that the last sentence of section 55 does not apply to this case but only to cases in which the party in default is one who is required to deliver lists, &c., for the purpose of charging other parties to the duties. I am not able to trace to what extent, if at all, these points were made in the Court of Appeal as bars to the proceedings, for they are not referred to in the judgments, and they do not appear to be of much weight; for, as to the first, the powers of surcharge can hardly be read as extinguishing the operation of section 55, and as to the second it is clear that the alternative proceedings mentioned in the sentence may be taken against every person on whom the duties to which the section refers have been imposed, who shall not, for offences dealt with by it, have been assessed in treble the duty as provided by it. I think that the appeal should be allowed, with costs, here and below, and that the judgment of the Lord Chief-Justice should be restored.

LORD SHAW—The question in issue in this appeal is whether a person who negligently delivers an incorrect return of his profits and gains to the Inland Revenue authorities renders himself liable to the penalty of £50 imposed by section 55 of the Income Tax Act 1842. That Act has been re-enacted by Finance Acts of succeeding years. The actual statute under which the particular instance of its application is in question now was the Finance Act 1905, applying, of course, as it did to the statement by the respondent of his income for assessment for the year 1905-6 and returned to the Inland Revenue by him on the 20th May 1905. By the information filed by the Attorney-General the penalty before mentioned was claimed. After certain proceedings, which need not be referred to, in the course of which a special jury found that the return had been made negligently, Lord Alverstone, C.J., directed judgment to be entered for the Crown. In the Scotch case of *Lord Advocate* v. *Sawers*, 35 S.L.R. 190, 3 Tax Cas. 617, the same point was also settled favourably to the Crown by a decision of the First Division of the Court of Session. The Lords Justices reversed the judgment of the Lord Chief-Justice, differed from the decision of the Court of Session, and entered judgment for the defendant. This difference of judicial opinion in the two kingdoms on the construction of an imperial statute adds importance to the question. The difference was fully before the minds of the Lords Justices, and I have thought it due and respectful to them to consider with much care the reasons upon which they proceeded. These are compendiously and conveniently formulated in a serious of propositions, six in number, by Cozens-Hardy, M.R., to which I shall afterwards refer *seriatim*. The case has been argued before your Lordships upon the footing that while neglect has thus been affirmed the respondent was not guilty of any fraudulent conduct. I think that the admission to that effect by the Crown was entirely proper. If the penalty is due it is agreed that it is exigible under section 55 alone. That section is in the following terms:—[*His Lordship read the section ut supra*]—It is agreed, of course, that the respondent falls within the category of "any person who ought by this Act to deliver any list, declaration, or statement, as aforesaid;" (2) that he is not in a position as trustee, agent, or receiver, to escape liability for the penalty, or obtain further time to cure "an imperfect list, declaration, or statement," or to deliver a list, &c., "as perfect as the nature of the case will enable him to prepare and deliver;" (3) that he has not been assessed in treble the duty; and (4) that the forfeiture of £50 would accordingly apply if the list, declaration, or statement required by statute was not timeously returned. The respondent maintained, however, that "any list, declaration, or statement as aforesaid" means a list, declaration, or statement of any kind, true or untrue, correct or incorrect. The Crown maintained that the words "list, declaration, or statement as aforesaid" refer to section 52, and provide for a true and correct statement in writing. That is the whole point of the case, apparently very simple. Other sections of the Act were relied on in the Court below and in the arguments before this House. The chief of these are three in number. By sec. 48 it is provided that assessors shall deliver at the residences of persons charge-

able notices "requiring every such person to prepare and deliver in manner directed by this Act all such lists, declarations, and statements as they respectively are required to do by this Act." What are "such lists, &c., as they are respectively required to prepare and deliver?" The answer to that question is contained in sec. 52. That section is in the following terms:—[*His Lordship read the section ut supra*]. I do not think that it requires anything more than the language of this section to show that what is fundamental to it is the truth and correctness of the statement in writing thus required to be prepared and delivered. This is positively and naturally demanded, because by it a taxing basis is reached, and upon it taxation proceeds. The statement in the case of profits and gains must be to some extent and *ex necessitate* an estimate according to the best of the deponent's judgment and belief, and this would no doubt be the interpretation, that under these conditions the statement should be true and accurate as an estimate. Of the other sections mainly relied on the chief is sec. 129. It has been already seen that *in gremio* of sec. 55 the case of corrections of inaccuracies on the part of an agent or trustee was dealt with, but it seems to have been thought expedient to make a wider provision for the amendment of returns. Accordingly sec. 129 provides as follows:—[*His Lordship read the section ut supra*]. It is admitted that the respondent did not deliver any rectifying or additional statement or schedule, that the Commissioners have not made any certificate, and that, in short, sec. 129 has not been, and cannot now be, invoked. The respondent maintains that his statutory duty was completely discharged by returning a declaration or statement, although that declaration or statement was negligently untrue and inaccurate. This contention has been confirmed by the Court of Appeal. I now turn to the Master of the Rolls' reasons to which I have referred — The proposition of the learned Judge is that sec. 55 "applies only to non-delivery as distinct from delivery of an imperfect or inaccurate statement." The first point mentioned in support thereof is (1) "The Act in other sections speaks of a person having delivered such 'account as aforesaid,' although it is false—see secs. 68 and 178." I have looked at the sections referred to, and it humbly appears to me that there would be no real inconsistency, even although sec. 55 had stated in terms that the taxpayer was to deliver a true and accurate statement, in making subsequent provision imposing penalties for the delivery of "false or fraudulent" accounts, statements, and so forth. The main duty imposed being to make statements which are true and accurate, it appears to me to be in no way inconsistent with the duty of making them true and accurate that "every person who shall wilfully deliver any such account as aforesaid which shall be false" shall be liable to a penalty. By "such account as aforesaid" it can of course be maintained that there is a repugnancy in language between "such true and accurate account" and "which shall be false," but the real meaning of the language employed in different sections of the Act of Parliament is to make operative both a duty and a penalty, and this is done quite simply by treating the phrase "such account as aforesaid which shall be false" as equivalent to providing a penalty for the falsehood of that which was bound to be returned as true. It purported to be true, it turned out to be false, and all that the sections relied upon provide is simply to penalise wilful delivery of a false account. The second point taken by the Master of the Rolls is as follows:—"The words 'as aforesaid' naturally refer to section 48, where the words are 'make out such lists, declarations, or statements as may be applicable to such person'—that is to say, lists, declarations, or statements of the character appropriate to the particular person, and nothing more. To avoid misconception I may add that a document may be so illusory that the tribunal would be justified in holding that there had been no delivery; but no such case arises here." I can only say that it appears to me to be the sounder view that the words "as aforesaid" refer to all the previous sections dealing with the list, declaration, or statement, including very particularly section 52. I fail to understand why the reference in section 55 should be held to be made to section 48 and not to the later and nearer section, namely, section 52. It provides actually what the statement is to be, and expressly that it is to be true and accurate. I cannot bring myself to understand why, in section 55 declaring the penal consequences of not delivering "any list, declaration, or statement, as aforesaid," it should be permissible to omit the reference to section 52 which answers the reference of the words "as aforesaid" by telling what and what manner of statement is not to be refused, neglected, or delayed. But it humbly appears to me that section 48 does not bear the construction put upon it by the Court of Appeal. The Master of the Rolls says "the words 'as aforesaid' naturally refer to section 48, where the words are 'make out such lists, declarations, or statements, as may be applicable to such persons.'" No doubt these words do occur in the latter portion of section 48, that portion which deals with the cause of refusal to make out such statements, &c., "as may be applicable to such person." But what are the statements there referred to? They are mentioned in the earlier portion of section 48, itself, which deals with the notice demanding the return, and does so in these words, "requiring every such person to prepare and deliver, in manner directed by this Act, all such lists, declarations, and statements as they are respectively required to do by this Act." This is the language of section 48 itself. Where and how is it that they are so "required"? It is under section 52, and the requirement is to deliver "a true and accurate statement." The

three sections, accordingly, 48, 52, and 55, run accurately together. I only add, with regard to this point, and the use of the word "illusory" by the Master of the Rolls and the other Judges of the Court of Appeal, that if by the word "illusory" he meant something apparently accurate but in fact deceptive, that does not, in my humble judgment, render the return no return, but it renders it an untrue and inaccurate return, and I do not think that the reason is supported by the reference to that term. The third point is—"The Act contains provisions not of a penal character for rectifying any omission or wrong statement in a statement or schedule (sec. 129)." I regret that I am compelled to differ very strongly with regard to the inference to be drawn from section 129. The provision by statute of a means of escape from penal consequences on convincing the authorities that there was no fraud and that the error was excusable seems to me to point conclusively to the initial duty having been to make a true and accurate statement. Both in construing and in administering this Act of Parliament it would appear to me to be a strong, and indeed an extraordinary, thing to hold that the method of arriving at a true and accurate basis of taxation was to say to the taxpayer—"You may deliver anything, true or untrue, accurate or inaccurate, and thereupon you may proceed in the direction of accuracy by appeals to the authorities," presumably on the eve of possible proceedings of a penal character, "to permit the correction of what was initially wrong." The simpler and better construction of the statute would appear to be that when a taxpayer is required to make a statement "as aforesaid," he is to make it true and accurate; and from the administrative point of view this would enable all the authorities to start departmental work upon the natural and business-like assumption of a first datum of accuracy. The fourth point is as follows:—"The Act imposes a penalty on a false or fraudulent statement which is less severe than that which in the other hypothesis is imposed on an honest mistake (sec. 178)." This is well worthy of consideration. The Act itself in its course is directed against great varieties of irregularities, inaccuracies, omissions, delays, and fraudulent and negligent practices. The respondent in his argument went through the relevant sections, and it became quite apparent that it would be unsafe to deduce from them any view that penalties were graduated in this Act upon any scale of moral delinquency. One administrative reason may be referred to, namely this—Totally irrespective of the presence of fraud, a defect in certain particulars or returns, if easily passed over or unless heavily punished, might become widespread and habitual, and so cause great interruption to the efficiency of departmental work. I think this observation apt in reference to the return in question here, which forms in my view a combined and fundamental part of the claim of taxation. I observe also that the mitigations possible under section 129 *pro tanto* dissipate any argument grounded on comparative severity. The fifth point stated is as follows:—"The proviso in the middle of section 55 dealing with trustees acting on behalf of parties chargeable, presupposes non-delivery of any statement and then authorises delivery, after prosecution, of an imperfect list." This view seems to be inconsistent with the provisions and terms of section 55 itself. That section does not appear to me to presuppose "non-delivery of any statement" by trustees. Its provisions are expressly that if a trustee "shall deliver an imperfect list . . . declaring himself unable to give a more perfect list." The point need not be further referred to except to add that the provision as to trustees confirms the view of section 55 to the effect that under it accuracy is expected all round, but that in the case of trustees, who may not have access to the information which presumably would be in the possession of an ordinary taxpayer dealing with his own gains and profits, special provisions dealing with delay or imperfections not unnaturally occur. The sixth point is—"The Revenue is protected by the power possessed by the Commissioners of assessing a person making default (sec. 113) and to surcharge (secs. 161, 162)." The power of assessment and surcharge does not appear to me to assist the construction of section 55. Such powers are inserted in the Act simply because in addition to all kinds of penalties the Inland Revenue must gather in taxation, and if the taxpayer will not furnish the information himself some means must be provided for recovering the duty, and these powers are given to enable the authorities to proceed with the best available estimate. My respect for the learned Lords Justices has constrained me to follow the exact lines of the investigation into these provisions which they have themselves pursued. In the result, and for reasons which have already appeared sufficiently in the course of the inquiry, I have come to the conclusion that the judgment of Lord Alverstone, C.J., was correct and ought to be restored. With regard to the Scotch decision in *Lord Advocate* v. *Sawers* (*cit.*), I see no reason whatever for adopting the view that it was inadequately presented or imperfectly considered. The Lord Ordinary (Lord Stormonth Darling) expresses his opinion thus—"It seems to me that when section 55, coming as it does immediately after section 52, refers to any statement 'as aforesaid' it must be understood as meaning the true and correct statement which is required by section 52. Anything else would really lead to absurdity. If a man were to put in a piece of blank paper and call it a statement, or if he were to lodge a statement flagrantly and extravagantly deficient or incorrect, then according to the argument of the defender he would be exempt from prosecution, at all events under section 55. The reasonable reading of section 55 is that if there is a failure to deliver the kind of statement required by section 52, either by

delivering no statement at all or by delivering a statement which is untrue or incorrect, then the penalty is incurred and may be recovered in the prescribed manner." To the cogency of the opinion of this distinguished Judge it might have been possible to add one other consideration, and that is added by the learned Lord President (Robertson) in these words—"The provision in favour of trustees in section 55 does not apply directly to a prosecution in one of Her Majesty's Courts, but it bears on the present question because the necessary implication of the provision is that a trustee who gives in an imperfect return would be liable to the penalty but for the relaxation which is enacted in his favour, and the implication necessarily applies to everybody else as well as to a trustee." These dicta express fully and clearly my opinion as to the sound construction of the Act. In my view *Lord Advocate* v. *Sawers* was rightly decided and this appeal should be allowed.

Judgment appealed from reversed.

Counsel for Appellant—Solicitor-General for England (Sir S. Evans, K.C.)—W. Finlay. Agent—Solicitor of Inland Revenue.

Counsel for Respondent—Party. Agents—Lovell, Son, & Pitfield, Solicitors.

HOUSE OF LORDS.

Monday, December 13, 1909.

(Before the Earl of Halsbury, Lords Ashbourne, Atkinson, Gorell, and Shaw.)

BRITANNIC MERTHYR COAL COMPANY *v.* DAVID.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Reparation—Negligence—Accident in Coal Mine—Breach of Statutory Regulations for Mine Working—Liability of Mine-Owners—Onus of Proof.

A blasting accident occurred in a coal mine, and an action was raised against the mine-owners in respect of injuries received by a miner. It was proved that statutory regulations as to the methods of blasting had been broken, certain obligatory precautions not having been taken. Under these circumstances *held* that the *onus* of proof lay upon the mine-owners to show that they had not failed in their duty of care.

The respondent raised an action of damages under the circumstances stated *supra* in rubric and in the judgment of the Earl of Halsbury. At the trial, after proof of these circumstances, the jury were directed by CHANNEL, J., that the *onus* of proof still rested upon the plaintiff (respondent) to show that the mine-owners had neglected their duty of enforcing the rules. The Court of Appeal (MOULTON and BUCKLEY, L.JJ., COZENS-HARDY, M.R., dissenting) set aside the verdict for the defenders and ordered a new trial.

Their Lordships gave considered judgment as follows:—

EARL OF HALSBURY—This is an appeal from the judgment of the Court of Appeal directing a new trial in an action by the widow of a man employed in a coal mine of the defendants, who was killed, together with several others, by an explosion in the mine on the 14th December 1907. It is not now matter of debate that the explosion was caused by a blasting operation, technically called a shot, which was required to remove a piece of rock which rendered it difficult to enlarge the main haulage road of the mine for the purpose of putting in some electric wires required therein. There are certain rules which have the force of a statute applicable to this colliery, and among them are rules applicable to the main haulage roadway and to dry and dusty parts of the mine when blasting operations are required. The place where the operation in this case was performed is both dry and dusty, and it is the main haulage roadway of the colliery. The rules in such cases require that only a particular class of explosives should be used; that within a certain distance the intended site of the explosion should be made wet artificially if it is not already wet naturally (which this place was not); that with some special exceptions the men should be withdrawn, and that the shot should be fired by a particular man who should be appointed specially for the purpose, and the shot selected for blasting should be selected by the manager of the mine, who should also see that the proper explosive material was brought into the mine for use. Further, to ensure the proper material being used, as I presume that he cannot be supposed to have sufficient chemical knowledge himself, he is protected if a properly signed certificate by an authority recognised by the rules certifies the genuineness of the authorised explosives. The work in respect of these electric wires began somewhere about July or August before the explosion on the 14th December. The cause was tried by Channell, J., on the 29th July 1908, and it was found that the cause of the explosion was the firing of a shot in a dry and dusty part of the mine; that it was fired in a prohibitive area where certain precautions were required to be taken, *none of which were taken;* and further, there was evidence that gunpowder was found in two holes bored for the purpose of being fired, and evidence was given rendering reasonably certain that the explosion itself had been caused by gunpowder, *a prohibited explosive.* It was further found that a man named Watkin Evans, who was seen boring the hole which was to be blasted, gave an order to a man named Miles, a collier, who in consequence fetched two pounds of gunpowder and brought it to his house the day before the explosion. Under these circumstances, which obviously called for