

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 CHANNEL, 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

some explanation, the burden of proving that the authorities of the mine had done their duty in taking proper care of the safety of the miners lay upon the appellants. Channell, J., to my mind, misdirected the jury in placing the burden of proof upon the plaintiff in the action. I have been thus particular in pointing out why in my opinion this verdict cannot be allowed to stand, since I think that the learned Judge misdirected the jury as to the *onus* of proof; and though he left the question to the jury, he left it in such a way and with such a direction that it was hardly possible for them to find any other verdict. Yet though I am agreeing with the conclusion arrived at by the majority of the Court of Appeal, I am by no means prepared to adopt the reasoning by which that conclusion was arrived at. Indeed it is not too much to say that I dissent from some of the propositions involved in that judgment. I am very clearly of opinion that there ought to be a new trial, since I think that the conclusion arrived at was a consequence of the misdirection. I am therefore of opinion that the appeal should be dismissed, and I move your Lordships accordingly.

LORD ASHBOURNE—I concur.

LORD ATKINSON—I concur.

LORD GORELL—In the circumstances of this case I agree with my noble and learned friend the Earl of Halsbury that there should be a new trial, and I agree with him in expressing dissent from some of the reasons for a new trial which were given in the Court of Appeal.

LORD SHAW—I entirely concur.

Appeal dismissed.

Counsel for Appellants—Francis Williams, K.C.—Eldon Bankes, K.C.—Trevor Lewis. Agents—Bell, Brodrick, & Gray, Solicitors.

Counsel for Respondent—Sir R. B. Finlay, K.C.—Abel Thomas, K.C.—Sankey, K.C.—Clive Lawrence. Agents—Smith, Rudell, & Dods, Solicitors.

HOUSE OF LORDS.

Monday, December 13, 1909.

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

COLDRICK *v.* PARTRIDGE, JONES, & COMPANY, LIMITED.

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

Master and Servant—Common Employment—Negligence of Fellow-Servant—Accident after Working Hours—Acceptance of Risk.

Colliery-owners provided a free service of trains which the workmen used if they so desired in going to and from work. An accident occurred to a train owing to the negligence of a servant engaged in repairs on the railway, and another servant was killed while travelling in the train.

Held that the deceased workman in using the train had accepted the risk of his fellow-servant's negligence although his own work was over for the day.

The appellant was the mother of a workman who was killed in the circumstances stated *supra* in rubric. An action of damages at her instance against the colliery-owners was dismissed by BRAY, J., and the Court of Appeal (VAUGHAN WILLIAMS, FARWELL, and KENNEDY, L.JJ.).

At the conclusion of the appellant's argument their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN) — The principle involved in the case of *Priestley v. Fowler*, 3 M. & W. 1, of which this appeal is an illustration, has been long settled, and repetition only tends to confuse a statement of law which has been well established. The question here is whether or not that principle is to apply to a case where the unfortunate man's work had actually been finished when the accident occurred, and the accident happened while he was returning home in a train furnished gratuitously by the employers to take workmen home, which they might use or not as they pleased. That the hours of work were over is immaterial, for the point is one of fact. Must it be implied that the deceased took the risk of accident when travelling in the train? The real argument, if the appellants are to prevail, must be that the risk was one not really incidental to the service, and that therefore there was no contract to be implied on the part of the deceased to take the risk of that journey. Now the law applicable to that question was stated long ago in the case of *Bartonshill Coal Company v. M'Guire* (3 Macq. 300) by Lord Ohelmsford, L.C., in this House, and what he said was this—"It is necessary, however, in each particular case to ascertain whether the servants are fellow-labourers