thing and purporting to do something on behalf of the principal. If the person is doing something within the scope of his authority, and purporting to do it for his principal, although in doing it he commits a wrong which his principal neither sanctioned nor intended, the principal may be liable. But if the person, although he has been employed as agent, is not, in the transaction which is the wrongful act, acting for, or purporting to be acting for, the principal, it seems to me impossible to treat that as a fraud of the principal."

In the present case, as I have said, it has been clearly found that the fraud was committed in the course of, and within the scope of, the duties with which the defendants had entrusted Sandles as their managing clerk. In my opinion they must in these circumstances stand answerable in law for their agent's misconduct.

I think that the appeal should be allowed and that the action should be disposed of in the same sense as in the judgment of Scrutton, J., where the treatment of the whole case, both in law and in fact, appears to me to have been correct, and with his opinion I also respectfully agree.

Judgment appealed from reversed, and judgment of Scrutton, J., restored with costs.

Counsel for the Appellant—Tobin, K.C.—J. A. Johnston. Agent—Walter C. Broadbridge, Solicitor.

Counsel for the Respondents—Greer, K.C.—F. Cuthbert Smith. Agent—G. Thatcher, for Grace, Smith, & Company, Liverpool, Solicitors.

HOUSE OF LORDS.

Friday, July 19, 1912.

(Before the Lord Chancellor (Viscount Haldane), the Earl of Halsbury, Lords Macnaghten and Atkinson.)

WATKINS *v.* NAVAL COLLIERY COMPANY LIMITED.

(On Appeal from the Court of Appeal in England.)

Reparation—Master and Servant—Negligence—Statutory Duty—Management of Mine—Responsibilities of Owners—Coal Mines Regulation Act 1887 (50 *and* 51 *Vict. cap.* 58), *sec.* 16.

The Coal Mines Regulation Act 1887 enacts—Section 16 (1)—"The owner . . . of a mine shall not employ any person in the mine or permit any person to be in the mine for the purpose of employment therein unless the following conditions respecting shafts or outlets are complied with, that is to say (*c*)—Proper apparatus for raising and lowering persons at each shaft or outlet shall be kept on the works belonging to the mine; and such apparatus, if not in actual use at the shafts or outlets, shall be constantly available for use."

A miner, while being lowered in a cage with twenty-six others, was killed by an accident caused by the defective condition of a spanner bar, the snapping of which caused the reversing gear of the winding engine to break down, which in turn caused the brake to give way and precipitated the cage to the bottom. Two months before the accident the manager of the mine had increased the complement of the cage from twenty to twenty-six men. In an action brought by the widow against the owners of the colliery a jury found that the accident was due to the inadequacy of the brake for this larger complement of men, combined with the defective condition of the spanner bar, and that the respondents had used reasonable care in selecting competent officials to whose neglect to provide adequate machinery the accident was due. *Held* that section 16 of the Coal Mines Regulation Act 1887 imposed on the respondents an absolute statutory duty to provide adequate machinery at the shaft, and in consequence of their failure to do so the respondents were liable in damages.

Britannic Merthyr Coal Company v. *David* (1910 A.C. 74) *distinguished.*

Appeal from a judgment of the Court of Appeal (Vaughan Williams, Farwell, and Kennedy, L.JJ.), reported 1911, 2 K.B. 162, reversing that in favour of the appellant given by Pickford, J., with a special jury.

The *facts* of the case appear from their Lordships' judgment, which was delivered as follows:—

Lord Chancellor (Haldane) — The action which gives rise to this appeal was brought by the appellant on behalf of herself and her infant children. The claim was based on a breach of statutory duty by the respondents, who are a Colliery Company carrying on business subject to the provisions of the Coal Mines Regulation Act 1887. It was also framed alternatively as an action at common law for negligence. It is agreed that the claim is not one which the Employers' Liability Act 1880 covered.

The action was brought on account of a fatal accident which happened to Albert Watkins, the husband of the appellant, on the 27th August 1909. He was one of twenty-six workmen who were being lowered on that day down a coal pit in a cage provided by the Colliery Company for the purpose. Until June 1909 the cage in question had been used for lowering and raising a load not exceeding twenty men at a time, and for such a load the brake on the winding engine was adequate. In June 1909 Mr Hollister, who had become manager of the colliery a short time previously, increased the number of men authorised to be lowered or raised at one time to twenty-six. On the occasion of the accident the reversing gear of the winding engine sud-

denly broke down, owing to the snapping of the spanner bar, which was defective. The effect was to throw the whole strain on the brake, and the brake was not adequate to hold the load of twenty-six men who were being lowered. The cage descended violently to the bottom, causing the corresponding ascending cage to go up violently, and to break loose from its winding rope and fall down the shaft on to the top of the other cage. The result was that Albert Watkins and six more of the men were killed, and the rest were seriously injured.

The action was tried before Pickford, J., and a special jury at the Glamorgan Assizes in March 1910. The jury found that the respondents had used reasonable care in obtaining competent officials, and that the officials concerned were competent; that the brake was adequate for lowering twenty men, but not for lowering twenty-six; and that the use of an unfit or inadequate brake was due to the negligence of one of the officials of the respondents, Mr Hollister, but not to the negligence of the respondents. They also found that the spanner bar was adequate for its purpose when it was fitted, but not at the time of the accident, and that this was due to the negligence of another of the officials of the respondents, Mr Dorman, but not to their own negligence; and further, that the winding engine was not, at the date of the accident, in a fit or adequate condition to lower twenty-six men, and that this was due to the defective condition of the brake and of the spanner bar, and to the negligence of the officials of the respondents, but not of the respondents themselves.

It must be observed in interpreting the verdict of "no negligence on the part of the respondents," that in his summing up the learned Judge who tried the case directed the jury as follows—"It is for you to answer: Can you say that a limited company can prove anything more to show that they have taken proper care to see that their machinery is right than that they have appointed proper and competent persons to do it? I can see nothing else, and I have heard nothing else suggested. They have done that in this case. If you think that this was all that they could do, then they have shown that they have taken reasonable and proper care to see that the brake was an adequate brake."

Pickford, J., finally gave judgment for the plaintiff for £500. He proceeded on the ground that section 49, rule 30, of the Coal Mines Regulation Act 1887 imposed an unqualified obligation on the respondents to attach to the lowering apparatus a brake adequate for the ordinary working of the mine as prescribed at the time of the accident, and that the finding of the jury that the respondents had not themselves been negligent as regards this obligation was therefore irrelevant. The Court of Appeal reversed this judgment on the ground that this House in *Britannic Merthyr Coal Company* v. *David* (1910 A.C. 74) had decided by implication that the obligation was not absolute, but was satisfied if the colliery owners had done their best by selecting proper officials and furnishing them with the means of carrying out the provisions of the statute and with proper instructions to do so.

In order to determine which of these views of the Coal Mines Regulation Act 1887 is correct it is necessary to refer to its provisions. The Act is divided into three parts. The first part imposes certain general conditions of employment in coal mines. The second part, which begins with section 49, enacts certain general rules which are to be observed, as far as reasonably practicable, in every coal mine; and the third part contains provisions relating to legal proceedings and other supplemental matters. Section 16 provides that the owner of a mine shall not employ any person in the mine, or permit him to be there for the purpose of employment, unless, among other conditions, the following condition is complied with—"Proper apparatus for raising and lowering persons" at the shaft "shall be kept on the works belonging to the mine, and such apparatus if not in actual use at the shafts or outlets shall be constantly available for use."

It is not disputed that this is a provision for the benefit of the workman, and that if it is broken he may, therefore, if he can prove special damage, succeed in an action. The real question is whether it imposes an absolute obligation, to the allegation of breach of which it is no answer that the Colliery Company have not been personally negligent.

I am of opinion that this is the true view, and that no question of negligence or of the doctrine of common employment is relevant. The statute appears to me to impose a condition without qualification, with which the colliery owners are bound to comply. I do not desire to be understood as dissenting from the view finally adopted by Pickford, J., that rule 30 of section 49 would in itself entitle the plaintiff to succeed, though I think that the question which he put to the jury at an earlier stage, to which I have already referred, was misconceived. I only wish to say that it does not appear to me necessary to resort to the general rules enacted under that section, because neither these rules, nor any special rules made under section 51 for the guidance of those employed in the mine, do, on the true construction of the Act, affect the conditions imposed by section 16. The latter section was referred to both before Pickford, J., and in the Court of Appeal, but sufficient attention was not paid to it. In my opinion it is decisive of this case when it is applied to the facts found by the jury.

The learned Judges in the Court of Appeal considered that they were bound by the decision of this House in *Britannic Merthyr Coal Company* v. *David* to hold that an analogous provision under section 49 as to shot firing did not import an absolute obligation, because otherwise judgment would have been entered for the plaintiff instead of a new trial being

directed. But in that case a new trial was all that was asked for, the reason being that the Judge who tried the case had misled the defendants into not giving evidence by ruling that the burden of proving negligence rested on the plaintiff. Lord Halsbury expressed no opinion on the construction of section 49, and no question was raised on the earlier provisions of the statute which are material in this case.

For the reasons which I have indicated I am of opinion that the plaintiff in the present action was entitled to succeed. It is therefore unnecessary to consider whether the claim could have been made successfully, apart from the provisions of the statute, on the ground of negligence at common law. The consideration of this alternative ground of action would raise questions as to the meaning of the verdict and as to the effect of the doctrine of common employment, which are not raised if, as I think it ought to be, the case is treated as one of a simple breach of a statutory obligation.

I move that the judgment of the Court of Appeal be reversed, and that the appeal be allowed with costs.

EARL OF HALSBURY—I concur.

LORD MACNAGHTEN—I agree.

LORD ATKINSON—This appears to me to be a perfectly plain and simple case, and I think that if the Lords Justices had not failed to appreciate correctly what was the precise point decided by this House in *Britannic Merthyr Coal Company* v. *David*, and what were the true grounds of that decision, they would have come to a conclusion entirely different from that at which they arrived.

In that case a miner, the husband of the plaintiff, was killed by an explosion in a mine. It was found by the jury that this explosion was caused by the firing of a shot in blasting operations. In firing this shot the rules set out in section 49 of the Coal Mines Regulation Act 1887 were violated in several respects. First, the shot was not fired by the duly appointed shot-firer, but by two fellow-workmen of the deceased. Second, it was fired in a prohibited area without the precautions required by the rules having been taken, and in addition there was strong evidence to show that an explosive prohibited by the rules—gunpowder—had in fact been used. Now the combined effect of sections 47 and 50 of this statute, where rules such as those mentioned are violated, is, I think, this—they make every person who contravenes or does not comply with them guilty of an offence against the Act, and therefore impose upon such persons corresponding statutory obligations to observe them so as not to commit any of these offences.

Each person concerned is thus made responsible for every breach of the rules which he has himself committed and for every failure of his to observe them; but that is not all. Section 50 goes further. It makes each of the following persons, the owner, agent, and manager, *prima facie* guilty of an offence against the Act if any of the rules have been violated or not observed by a person or persons other than themselves, even though the act or omission took place without their knowledge or consent. The section provides, however, for the person or persons thus vicariously made liable for the acts of others a means of escape from all liability. It is only necessary for them to establish that they have taken all reasonable means, by publishing and to the best of their power enforcing rules and regulations for the working of the mine, to prevent the contravention or non-compliance with the rules of which the person or persons other than themselves has or have been guilty.

Nothing can, I think, be plainer on the construction of this section than that this latter is a matter of defence to the criminal liability, the burden of proving which rests upon the owner, agent, or manager, as the case may be, who desires to exculpate himself; and if it be a defence against criminal responsibility it is clearly, I think, a matter of defence against civil responsibility also. Channell, J., in that case lost sight of this fact, and instructed the jury that the burden of proving that the contravention of the rules by the two workmen who fired the shot was brought about by the neglect of the defendants to take reasonable means to prevent such a contravention by enforcing the rules to the best of their power lay upon the plaintiff, which in effect amounted to telling them that the plaintiff was bound to prove in anticipation that the defendants had no case.

Your Lordships held that this amounted to misdirection of the jury, and because it did so awarded to the plaintiff the only relief for which her counsel asked, namely, a new trial of the action. The only point decided in this House was therefore this, that the owner of the mine must himself prove the facts which relieve him from liability for the acts done by one of his workmen in violation of the general rules.

Again, that case was not touched by any of the provisions of section 16 of the statute. That section applies directly to the present case, and the appellant is not, I think, precluded from relying upon it either by the form of pleading adopted by her or by the course which the argument took in the Court of Appeal. I am satisfied that the bearing of this section upon the case was discussed in the Court of Appeal, and as to form of pleading it is quite plain that, in describing one at least of the particular breaches of statutory duty relied upon, language is used which describes correctly the particular breach of the provisions of this section which actually took place. It runs thus—"The winding engine by means of which the said Albert Watkins was lowered into the said mine was a machine worked by steam and used for lowering and raising persons, and there was not attached to it an adequate brake."

It is said that this language would equally describe a breach of the general rule 30. That may well be; but that coincidence fur-

nishes in my mind no ground whatever for the respondents' contention that the appellant's action was founded solely on a breach or breaches of the general or special rules, to the exclusion of section 16. This section deals with matters of construction and equipment. It is unqualified in its terms. It does not provide any means of escape from the *primâ facie* liability which it imposes, such as is provided by sections 50 and 57 in the cases of breaches of the general and special rules respectively; it imposes on the owner, agent, and manager of a mine an absolute duty not to employ any person in the mine, or to permit any person to be in the mine for the purpose of being employed in it, unless the following condition, amongst others, is complied with—namely, this, that proper apparatus for raising and lowering persons at each shaft or outlet shall be kept on the works belonging to the mine, and even if not in actual use shall be constantly available for use.

Every owner, agent, or manager who acts in contravention of, or fails to comply with, this provision of the section is made guilty of an offence against the Act, and the working of a mine in which any person is employed, or is permitted to be for the purpose of employment, in contravention of the section, may be restrained by injunction, without prejudice, however, to to any other remedy permitted by law for enforcing the provisions of the Act.

It is argued, however, that this is merely a negative requirement. I confess that I can see no difference whatever in prescribing that a certain thing shall not be done unless certain apparatus be provided, and in prescribing that if that thing is done the particular apparatus shall be provided. Both are equally imperative and obligatory. If a workman is to be lowered into a mine, or raised from it, and he cannot be employed in the mine unless this be done, then the owner must have the mine equipped with apparatus always ready for use proper for lowering him into and raising him from it.

Here the owners had miners working in the mine and, that being so, the absolute obligation described rested upon them.

If any meaning is to be given to words, an apparatus proper for any particular work must mean an apparatus adequate to do that work. It is not enough that it should be adequate to do some other work which puts less strain upon it. In the present case the manager, Mr Hollister, deliberately, formally, and with the publicity required by the special rules, to the framing of which the owners of the mine must be taken to have been parties, put the apparatus to do work which it was not adequate to do—namely, to carry a load of twenty-six men. It had no brake power proper for such a load. It was dangerous to use it for this purpose in the absence of such brake power. At the trial Mr Hollister admitted, in answer to the Judge, that, "it would be dangerous to run the banking engine without a brake which would stop it without the reversing gear." It had no such brake, and the proof of this is that for the two months during which the increased load was carried the reversing gear had to be employed to prevent the evil results which would probably have followed from the insufficiency of the brake.

The jury have found that the brake attached to the winding gear was not adequate for lowering twenty-six men, and the only answer which the respondents have to give to this finding is that the owners appointed a competent manager, that he directed the overloading, and that they are entirely irresponsible for the consequences of his action in this respect. In my view that is no answer at all. The owners have deliberately clothed their manager with authority to direct the number of persons to be carried up and down in each compartment of a cage (rule 6 of the special rules). That direction, if given, is not only to be put up legibly, and maintained in a conspicuous place on the surface near the shaft head, but it is to be recorded in the books of the colliery. It is, I think, impossible to contend that the owners are not responsible for the action, so authorised, of their manager, or that they are not bound to provide apparatus adequate to do the work which he, by virtue of the authority with which they have clothed him, directs to be done. They have not supplied such an apparatus. The death of the deceased has been caused by reason of their failure in this respect, and the plaintiff is therefore, in my view, clearly entitled to recover. I think, accordingly, that the decision of the Court of Appeal was wrong, and should be reversed, and this appeal should be allowed with costs.

Judgment appealed from reversed. Judgment of Pickford, J., restored. The respondents to pay to the appellant her costs in this House and in the courts below.

Counsel for the Appellant—Sir R. Finlay, K.C. — Abel Thomas, K.C. — A. Parsons. Agents — Smith, Rundell, & Dods, for Morgan, Bruce, & Nicholas, Pontypridd, Solicitors.

Counsel for the Respondents—B. Francis Williams, K.C. — Atkin, K.C. — Trevor Lewis. Agents—Barlow, Barlow, & Lyde, for C. & W. Kenshole, Aberdare, Solicitors.