Sir H. Montague Allan's proposals, and that his (Lindsay's) directors did not see their way to join any scheme which did not provide for part of the purchase money being paid in cash. Their Lordships do not think that any duty lay upon an agent, such as Burchell was, to communicate to his principals proposals which those principals had theretofore in effect informed him could not and would not be accepted. The answer to the second contention is that if an agent such as Burchell was brings a person into relation with his principal as an intending purchaser, the agent has done the most effective and, possibly, the most laborious and expensive part of his work, and that if the principal takes advantage of that work, and behind the back of the agent and unknown to him, sells to the purchaser thus brought into touch with him on terms which the agent theretofore advised the principal not to accept, the agent's act may still well be the effective cause of the sale. There can be no real difference between such a case and those cases where the principal sells to the purchaser introduced by the agent at a price below the limit given to the agent. Pearson, acting with his associates in the interests of the North Atlantic Colliery, was the purchaser introduced. Pearson with his co-adventurers acting in the same interest was the actual purchaser—in fact nothing was in reality altered but the consideration to be paid. Stock was to be given in a larger proportion than Burchell was authorised to accept. In all other respects the sale made and the sale authorised to be made by Burchell were in effect the same. On this question of fact there was, their Lordships think, ample evidence to sustain the conclusion at which the referee presumably arrived, namely, that the appellant's acts were an effective cause of the sale which actually took place. In their Lordships' view it was the right conclusion, and the finding to that effect ought not, they think, to be disturbed. There only remains the question of damages. The referee found that "the power of sale was a continuing power of sale." By that presumably he meant that the agent's employment was "a general employment" in the sense in which Lord Watson, in his judgment in *Toulmin* v. *Millar* (58 L.T.R. 96), uses those words. This means, however, that Burchell's contract was that should the mine be eventually sold to a purchaser introduced by him, he, Burchell, would be entitled to commission at the stipulated rate, although the price paid should be less than, or different from, the price named to him as a limit. The secret sale deprived him of the benefit of that contract. He lost his chance of earning this commission. In *Inchbald* v. *Western Neilgherry Coffee, &c., Company* (17 C.B., N.S. 733), Willes, J., thus lays down the rule of law applicable to such cases—"I apprehend that wherever money is to be paid by one man to another upon a given event, the party upon whom is cast the obligation to pay is liable to the party who is to receive the money if he does any act which prevents or makes it less probable that he should receive it. The negotiations for sale carried on by Burchell extended over two years. From the correspondence it is clear they cost him much in time and labour, and something in money. It was quite open to the referee to take, as the measure of damages, what would have been Burchell's commission at the stipulated rate, 10 per cent. on the consideration actually received for the sale. This is apparently what he did. In their Lordships' view, therefore, the conclusions at which the referee arrived on the nature and limits of the appellant's employment, as well as on the amount of damages to be awarded, are not only sustainable upon the evidence, but are in themselves right. The appeal, in their opinion, should therefore be allowed, the judgment appealed from reversed, and the judgment of the referee restored, and they will humbly advise His Majesty accordingly. The respondents must pay the costs here, including the costs of the petition for special leave to appeal which were by their Lordships' order reserved, as well as the costs in the Court below.

Judgment appealed from reversed.

Counsel for Appellant—C. A. Russell, K.C.—Burchell, K.C.—Geoffrey Lawrence. Agents—Hill, Son, & Rickards, Solicitors.

Counsel for Respondents — J. Eldon Bankes, K.C.—Rowlatt. Agents—Bischoff, Dodgson, Coxe, Bompas, & Bischoff, Solicitors.

HOUSE OF LORDS.

Thursday, November 3, 1910.

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

LEES *v.* DUNKERLEY BROTHERS.

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

Master and Servant—Reparation—Collaborateur—Injury through Negligence of Fellow-Servant—Compensation by Employer—Indemnity from Fellow-Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *sec.* 6.

A workman was injured while at work owing to the negligence of two fellow-servants. The employers became liable to pay him compensation, and claimed to be indemnified by the fellow-servants, as liable to pay damages under "a legal liability in some person other than the employer" to pay damage in respect of the injury.

Held that the fellow-servants' negligence constituted legal liability in terms of the Act, and that the doctrine of collaborateur did not affect the liabilities of servants *inter se.*

Wright v. *Roxburgh*, 1864, 2 Macph. 748, *approved.*

The respondents were cotton-spinners, and employed the appellants to control certain machinery. The appellants started this negligently, and in breach of the regulations under the Factory and Workshop Act 1901, sec. 85, for which they were convicted and fined. Owing to this negligence another workman of the respondents was injured, and obtained from them compensation under the Workmen's Compensation Act 1906. The respondents successfully claimed an indemnity against the negligent workmen, under section 6 of the Workmen's Compensation Act, before the County Court Judge, whose judgment was affirmed by the Court of Appeal (COZENS-HARDY, M.R., BUCKLEY and KENNEDY, L.JJ.).

The workman appealed.

At the conclusion of the argument for the appellants their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I think that this appeal must be dismissed. An indemnity is payable if it comes within the following words—"Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof." Now here there was an "injury for which compensation was payable," and it was "caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof"—at least that is so in my clear opinion. But it is said on behalf of the appellants—"No, there is no liability of one servant towards another in respect of negligence in a common employment." No authority is quoted for that strange doctrine except a dictum, in one of two reports of a case, which is supposed to have been uttered by Pollock, C.B. I respectfully dissent from that opinion, if Pollock, C.B., ever expressed it. We are in fact asked to extend, or rather to distort, the doctrine of *Priestley* v. *Fowler*, 3 M. & W. 1. I have no desire to extend that doctrine; but I must point out that in that case the Court implied a term in a real contract, whereas in the present case we are asked to imply a contract where it is perfectly obvious that there is no contract at all, namely, in the relation between two fellow-servants. I can hardly imagine a more dangerous or mischievous principle than that which it is sought to set up here. It may be right or wrong to say, as *Priestley* v. *Fowler* says, that a man is not to be responsible for the negligence of his agents. That is decided law, and I make no comment upon it. But it is a very different proposition to say that a man is not to be responsible for his own negligence. That would mean a free hand to everybody to neglect his duty towards his fellow-servant, and escape with impunity from all liability for damages for the consequences of his own carelessness or neglect of duty. Everyone must have an interest in maintaining the law in a sense hostile to such a proposition, and I should think that of all classes in the community workmen who work together in many dangerous employments have the greatest interest of all in preventing the doctrine which has been put forward very carefully and reasonably from being accepted.

The EARL OF HALSBURY and LORD ATKINSON concurred.

LORD SHAW—I concur, and I think it only necessary to add one observation in view of the citation of a Scotch authority—*Wright* v. *Roxburgh*, 1864, 2 Macph. 748—which it was said had decided the point now before your Lordships. It is reported in the following language. I read from the judgment of Lord Benholme—"An explosion of fire damp from a sudden introduction of the fresh air by its own downcast, so as to mix with the foul air accumulated during the stagnation in its own workings, was quite sufficient, as the scientific witnesses say, to occasion the explosion. Now it appears to me that Morris, the man by whom this operation was performed, was aware that Phillips and Wright were in the upper workings, and he says himself that he did not think it worth while to send them out. He was aware that this was a dangerous operation. He was told so by two persons at the time and he must have known that it was so. I think that his own experience in regard to the former explosion and accident which happened in the Ell seam ought to have made him cautious in venturing on such an operation, which all the scientific witnesses say was a dangerous one in a fiery pit such as this was. I think, therefore, that as against Morris there can be no doubt that this case is made out." Accordingly there was no doubt then, and so far as I know there never has been any doubt on such a point in the law of Scotland until now. And when I look at the facts of the present case I find that the person against whom this action is brought for indemnification is a person who has been so negligent as to lay himself open to conviction under the criminal law as an offender against the statute. Under these circumstances I venture to agree respectfully but strongly with the Lord Chancellor that it would have the worst possible consequences to allow the ordinary liability to be escaped from as it is here sought to be.

Appeal dismissed.

Counsel for Appellants—Sankey, K.C.—Adshead Elliot. Agents—Rawle, Johnstone, & Company, Solicitors.

Counsel for Respondents—C. A. Russell, K.C.—E. C. Burgis. Agents—Percy J. Nicholls, Solicitor.