"The immunity extended to a master in the case of injuries caused to each other by his servants whilst they are working for him to a common end is an exception from the general rule, and rests upon an implied undertaking by the servant to bear the risks arising from the possible negligence of a fellow-servant who has been selected with due care by his master.

It is difficult to see on what principle a servant can be said to be selected with due care by his master when the master, in defiance of a positive statutory prohibition, selects for a particular work a servant whose fitness for that work has never been ascertained in the manner prescribed.

Moreover, there is an entire absence in this case of all evidence to shew that Weymark was in fact fitted to discharge the duties he was put to discharge, or was ever considered so to be by any responsible official of the company. It is not at all the case of a servant of proved and known efficiency for a particular work being selected to do that work without having passed a test which his employers knew, or *bona fide* and reasonably believed, he could pass. Not at all. The defendant company abstained from giving any evidence to that effect. They took that course no doubt for good reason, but they must bear the consequence.

The principle upon which the cases of *Groves* v. *Wimborne*, [1898] 2 Q. B. 402; *David* v. *Britannic Merthyr Coal Company*, [1909] 2 K. B. 146; and *Butler* v. *The Fife Coal Company, Ltd.*, [1912] A. C. 149, were decided, applies, in their Lordships' view, to the present case. In the first-mentioned of these cases it was held that the doctrine of common employment does not apply where a statutory duty is violated by the employers. In the second, the Master of the Rolls, at p. 152, says:—

"But, on the other hand, a master is liable to his servant for the consequences of an accident caused to that servant by the breach of a statutory duty imposed directly and absolutely upon the master, and the master cannot shelter himself behind another servant to whom he has delegated the performance of the duty. In such a case the negligence is the master's negligence, and the doctrine of common employment has no application."

And at p. 157, Moulton, L.J., as he then was, says:—

"The risk of an employer failing to perform a statutory duty incumbent upon him seems to me to be clearly not a