the finding or opinion that the mother and children must be treated as wholly dependent on the father's earnings was a departure from the fact found. Such a departure was not in my opinion competent to a court of legal review. Following the judgment in *Senior* v. *Fountains* came that of *Moss Bay Company* (*cit.*), in regard to which I concur in the dissentient judgment of Buckley, L.J., and the present case, in which I fully share the opinion of the learned County Court Judge on which I have commented. As to the Irish case of *Queen* v. *Clarke* (1906, 2 Ir. Rep. 135), it follows from the opinion above delivered that I agree with the dissenting opinion of that distinguished Judge the late Fitzgibbon, L.J.

Judgment appealed from reversed.

Counsel for the Appellant—Isaacs, K.C. —Lowenthal. Agents—Hyman, Isaacs, & Lewis, Solicitors.

Counsel for the Respondents—Sir R. B. Finlay, K.C. — Mitchell Innes, K.C. — Griffith Jones. Agents — Rawle, Johnstone, & Co., Solicitors.

HOUSE OF LORDS.

Monday, March 14.

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

CLOVER, CLAYTON, AND COMPANY *v.* HUGHES.

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

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 *—Accident—Diseased State of Workman Leading to Death.*

A workman suffered from a severe aneurism of the heart, from which he might at any time have died even in bed. While he was at his work engaged in manual labour the aneurism burst and he died. The County Court Judge found that "the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal." He therefore awarded compensation.

Held (*diss.* Lords Atkinson and Shaw) that there was evidence to support the finding, and that the injury had arisen out of and in the course of the employment.

An award of compensation was made to Hughes under the Workmen's Compensation Act 1906, and affirmed by the Court of Appeal (COZENS-HARDY, M.R., FARWELL, and KENNEDY, L.JJ.). The employers Clover, Clayton, & Company appealed. The *facts* are given in the judgment.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—In this case a workman suffering from an aneurism in so advanced a state of disease that it might have burst at any time was tightening a nut with a spanner when the strain, quite ordinary in this quite ordinary work, ruptured the aneurism and he died. This is a mere summary of the facts. They and the learned County Court Judge's conclusions from them are stated fully in his instructive judgment. In what I am about to say I take the facts as he found them *in extenso* and rely upon them. He has held, and the Court of appeal have confirmed his decision, that in these circumstances the workman's dependants are entitled to compensation. I agree. These judgments make it unnecessary, from my point of view, that I should review the authorities, which I wish to follow loyally. But in a case of such great importance in the construction of this Act I wish to state my own view as to its meaning in the light of the weighty opinions which have been cited to us in argument. It seems to me important that we should regard not merely the question, "Was this an accident or not?" but also the entire sentence at the commencement of the Act of 1906, in which the liability of the employer to make compensation is set up. It runs as follows —"If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this Act." The injury must be caused by an accident, and the accident must arise out of the employment. We are not concerned here with the course of employment. What, then, is an "accident?" It has been defined in this House as "an unlooked for mishap, or an untoward event which is not expected or designed." All the Lords who took part in the decision of *Fenton* v. *Thorley*, 41 S.L.R. 460, [1903] A.C. 443, agreed in substance with this definition in Lord Macnaghten's speech. I take that as conclusive. Next, the accident must be one "arising out of" the employment. There must be some relation of cause and effect between the employment and the accident, as well as between the accident and the injury. I think that some of our difficulties in applying the Act are due to this. Courts of law have frequently been obliged to consider, especially in actions on policies of insurance, what is to be regarded as the cause of some particular event. In one sense every event is preceded by many causes. There is the *causa proxima*, the *causa causans*, the *causa sine qua non*. I will not pursue scholastic theories of causation. The *causa proxima* is alone considered in actions on a policy as a general rule. I do not think that it is the proper rule for cases under the section now under discussion, for the reasons explained by Lord Lindley in *Fenton* v. *Thorley* (*cit.*). It seems to me enough if it appears that the employment is one of the contributing causes without which the accident which actually happened would not have happened; and if the accident is one of the contributing causes without which the injury which actually followed would not have followed; and if this be so it affords a guidance through the formidable arguments propounded by Mr Simon on behalf of the appellants. This man died from the rupture of an aneurism, and "the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal." Again, "the aneurism was in such an advanced condition that it might have burst while the man was asleep, and very slight exertion or strain would have been sufficient to bring about a rupture." The first question here is whether or not the learned Judge was entitled to regard the rupture as an "accident" within the meaning of this Act. In my opinion he was so entitled. Certainly it was an "untoward event." It was not designed. It was unexpected in what seems to me the relevant sense—namely, that a sensible man who knew the nature of the work would not have expected it. I cannot agree with the argument presented to your Lordships that you are to ask whether a doctor acquainted with the man's condition would have expected it. Were that the right view, then it would not be an accident if a man very liable to fainting fits fell in a faint from a ladder and hurt himself. No doubt the ordinary accident is associated with something external — the bursting of a boiler, or an explosion in a mine, for example. But it may be merely from the man's own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think that it may also be something going wrong within the human frame itself, such as the straining of a muscle, or the breaking of a blood-vessel. If that occurred when he was lifting a weight it would be properly described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident. It cannot be disputed that the fatal injury was in this case due to this accident, the rupture of the aneurism. That of itself does not dispose of the case. It establishes that there may have been an injury by accident caused to the workman. But it does not establish that the accident was one "arising out of the employment." It is on these words that the stress of the case mainly lies, as Mr Simon in one passage of his argument partially indicated. When the man's condition was such that he might have died in his sleep, and the mere tightening the nut with no more strain than ordinary in such work caused the accident, can it be said that the accident was "one arising out of" the employment? That seems to me to be the crucial point. I do not think that we should attach any importance to the fact that there was no strain or exertion out of the ordinary. It is found by the County Court Judge that the strain in fact caused the rupture, meaning, no doubt, that if it had not been for the strain the rupture would not have occurred when it did. If the degree of exertion beyond what is usual had to be considered in these cases, there must be some standard of exertion, varying in every trade. Nor do I think that we should attach any importance to the fact that this man's health was as described. If the state of his health had to be considered, there must be some standard of health, varying, I suppose, with men of different ages. An accident arises out of the employment when the required exertion producing the accident is too great for the man undertaking the work, whatever the degree of exertion or the condition of health. It may be said, and was said, that if the Act admits of a claim in the present case, everyone whose disease kills him while he is at work will be entitled to compensation. I do not think so, and for this reason. It may be that if the work has not as a matter of substance contributed to the accident, though in fact the accident happened while he was working. In each case the arbitrator ought to consider whether, in substance, as far as he can judge on such a matter, the accident came from the disease alone, so that, whatever the man had been doing, it would probably have come all the same, or whether the employment contributed to it. In other words, did he die from the disease alone, or from the disease and employment taken together, looking at it broadly. Looking at it broadly, I say, and free from over nice conjectures, Was it the disease that did it, or did the work which he was doing help in any material degree? In the present case I might have come to a different conclusion on the facts had I been arbitrator, but I am bound by the findings if there was evidence to support them. It is found that the strain contributed to the death. There was evidence on which the learned Judge was entitled so to find, as I respectfully think, and I therefore advise your Lordships to affirm the order of the Court of Appeal.

Lord Macnaghten—In this case your Lordships have heard a very able and ingenious argument upon the construction of section 1 of the Workmen's Compensation Act. I need hardly say that it is not from any want of respect to the learned counsel who advanced it that I pass that argument by. It has been disposed of already. It was advanced and rejected in the case of *Fenton* v. *Thorley*, (*cit.*). There the Court of Appeal had held that if a man meets with a mishap in doing the very thing which he means to do, the occurrence cannot be called an accident. There must be, it was said, an accident and an injury. You are not to confuse the injury with the accident. Your Lordships' judgment, however, swept away these niceties of subtle disquisition and the endless perplexities of causation. It was held that "injury by accident" meant nothing more than "accidental injury"—or "accident" as the word is popularly used. It is not perhaps quite accurate to say that in that case a definition of the term "accident" was hazarded. It would be more correct to say that the decision was that the word "accident" was to be taken in its ordinary and popular sense. Some of the noble and learned Lords who gave judgment explained what they understood to be the ordinary meaning of the word, and I cannot but think that the explanations given, though varying slightly in expression, are substantially correct. In the argument in *Fenton* v. *Thorley* many decided cases were cited in which the word "accident" was considered. There is one which was cited in the argument but was not noticed in the judgment, and is I think a very good example of the far-reaching application of the word. I may perhaps be permitted to refer to it. It is not the less instructive because it occurred before the Workmen's Compensation Act of 1897. The case was this—A railway company had established a system of insurance for the benefit of their servants, who contributed to it. One of their servants, a signalman in his signal-box, saw a train coming, and noticed that there was something wrong with one of the carriages. He was much alarmed and waved his flag frantically. The engine-driver saw the signal, the train was stopped, and an imminent disaster was averted. But the signalman was so horrified that he lost his nerve and was incapacitated for work. Was that an accident? The condition of the insurance was "against all accidents, however caused, occurring to the insured in the fair and ordinary discharge of his duty." The Court of Appeal, consisting of Lord Esher, M.R., Kay and Smith, L.JJ., held unanimously that the plaintiff had been incapacitated by accident within the meaning of the policy. "The sole question," said Smith, L.J., "is whether the facts which have been proved constitute an injury to the assured by an accident within the meaning of the policy. . . . This is not a case in which, as has been suggested, the plaintiff has only suffered mental pain or grief. If that had been so, it would not have been within this policy; but this is a case in which he has been subjected to such a shock to his nerves that he has been physically prostrated and put out of employment for months. The company has undertaken to pay to the assured the weekly allowance of £1 in case of his being incapacitated for employment by reason of an accident however caused. That I read to mean an unforeseen circumstance, however caused, occurring to him in the discharge of his duty in the company's service. . . . It may be that an accident of this sort was not thought of when the policy was framed, for it is of rare occurrence, but that does not prevent it from coming within the terms of the policy"—*Pugh* v. *London, Brighton, and South Coast Railway Company*, [1896] 2 Q.B. 248. Now in the present case I have no doubt that there was an accident in the popular sense of the word. The man ruptured an aneurism in his aorta. An aneurism, as I understand it, is an unnatural or abnormal dilation of an artery, but still it is part of the artery and so of the man's body. The man "brôke part of his body," to borrow Lord Robertson's expression in *Brintons* v. *Turvey*, 42 S.L.R. 862, [1905] A.C. 230, and he certainly did not mean to do it. That the accident, if it was an accident, occurred in the course of the man's employment cannot be disputed. He was at his ordinary work at the time. The real question as it seems to me is this, Did it arise out of his employment? On this point the evidence before the County Court Judge was undoubtedly conflicting. But he has held that it did, and I think that there was evidence sufficient to support this finding, though I do not say that I should have come to the same conclusion myself. "The death," says the learned Judge, "was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal." The fact that the man's condition predisposed him to such an accident seems to me to be immaterial. The work was ordinary work but it was too heavy for him. It must be taken on the finding of the learned County Court Judge that the accident was not expected by the workman. It can hardly be supposed that he intended to kill himself. The fact that the result would have been expected, or indeed contemplated as a certainty, by a medical man of ordinary skill if he had diagnosed the case is I think nothing to the purpose. An occurrence is I think unexpected if it is not expected by the man who suffers by it, even though every man of common sense who knew the circumstances would think it certain to happen. All accidents I suppose may be divided into two classes—those which are due to one's own fault and those which are not. Accidents due to a man's own fault are for the most part the result either of inadvertence or miscalculation. If a man miscalculates his powers and so fails in what he attempts to do, and it may be injures himself, he has probably plenty of friends who will tell him, at any rate after the event, that they knew exactly what would happen. But still, as it seems to me, the untoward occurrence would popularly be called an "accident." I am of opinion that the judgment appealed from is right, and that the appeal should be dismissed with costs.

LORD ATKINSON—I regret that I am unable to concur with the judgments which have been delivered. I think that the meaning put upon the word "accident" in *Fenton* v. *Thorleg* (*cit.*) must now be accepted in all cases turning on the construction of the phrase "injury by accident" used in the Workmen's Compensation Act 1906 as its true meaning, namely, "an unlooked for mishap, or an untoward event which is not expected or designed." It must exclude disease. What is "unlooked for" or "unexpected" must in every case exist either in the external influences to which the sufferer is subjected, or in the effect upon him which those influences produce. I assume for the purposes of this case that it would be sufficient if they existed in the effect produced, though that may be, according to the argument for the appellants, to confound the injury with the accident. If the external conditions which surround, and the external influences which act upon, a workman at the time when he receives the injury are the normal conditions and influences which would surround and act upon anyone engaged in the discharge of the normal duties of employment such as his, it could not I think be contended that anything "unlooked for" or "unexpected" had come to pass in these conditions and influences, and if the physical state of the workman be such that those acquainted with it, and capable of forming an intelligent opinion upon the effect which those influences would under such conditions produce upon him regard the injury as the certain or highly probable consequence of their action, I fail to see how the injury could be regarded as an accident. In my view there was no evidence before the County Court Judge to show that, having regard to the duties which the deceased was employed to discharge, there was anything whatever abnormal, unexpected, or unlooked for in the external conditions which surrounded him, or in the external influences to which he was subjected at the time of his death. I think that the findings of the County Court Judge amount to a finding to this effect. He says—"I have come to the conclusion that the strain put upon the deceased by the exertion of tightening the nut with the spanner caused the rupture. There was no evidence from which I could draw any exact conclusion as to the extent of the strain which was being put on the deceased at the time, but it was at all events not more than is ordinary in such work; but the evidence satisfied me that such a strain was sufficient to bring about a rupture of the aneurism having regard to the man's condition at the time, and I find as a fact that the rupture was so brought about." This ordinary strain, however, was too much for the deceased, but why? Because he was suffering from a most dangerous disease—aneurism of the aorta. The disease was in a stage so far advanced that it might terminate fatally even when he was in his bed asleep and perfectly quiescent. The following passage is also to be found in the judgment of the County Court Judge:—"On a post-mortem examination it was found that there had existed a very large aneurism of the aorta, and death was attributed to rupture of the aorta. The aneurism was in such an advanced condition that it might have burst while the man was asleep, and a very slight exertion or strain would have been sufficient to bring about a rupture." The medical evidence is very strong and fully supports the summing up. Dr Winter says—"There was a very large aneurism of the aorta, that is, a dilation of the aorta, which is the large artery that feeds the heart. This was ruptured. This caused his death. . . . I think that the rupture was brought about by some strain or slip. Extra muscular strain might cause it. I think that the pulling of the nut might cause a strain which would cause death." But on cross-examination he says—"The aneurism was in an advanced condition. The man might have died in his sleep. I think that the pressure on the nut would accelerate the rupture of the aneurism. I think that this was the natural cause. . . . I say that the third turn of the nut is sufficient to produce the strain." Dr Glynn says—"In my view the aneurism very probably ruptured during the slight strain which the man applied when screwing the nut. . . . He might have gone on for a few weeks longer. The fact that he had returned from dinner would render rupture more likely to occur." On cross-examination he admits that "the man might have died in his sleep, or while walking to his work from extra force needed." That means, I presume, from the extra force needed to walk to his work. Dr Owen expressed an opinion that the exertion which the deceased was undergoing "contributed to the rupture of the aneurism," and that "muscular exertion is usually the immediate cause of the rupture of an aneurism." That appears to me merely to amount to this, that the disease was so far advanced that the rupture might have happened from natural causes, even when the deceased was asleep and quiescent, but that muscular exertion, even so slight as that involved in walking, might accelerate the fatal end, and the slight exertion of turning the nut did, in the opinion of the doctors, in fact accelerate it in this case. Now, what was the nature of this slight exertion? It was normal in the deceased's employment. It was not sudden. It was not severe. It was neither unexpected nor unlooked for. On the contrary, it was the very exertion which he was employed to make, and it was contemplated that he should make it. Connell, the fellow-workman of the deceased workman, said—"We were making a condenser bath. We were putting nuts on the bolts by which the sides were held together. The sides had to be screwed tight together. . . . I held the washer while he put on the nut and screwed it up with his fingers; then he tightened it with a spanner. He had taken about two turns of the spanner. He was about to take another." He then goes on to describe the supposed slip which, if it ever occurred, was not thought to have caused the deceased's death. "The spanner," he said, "would be about 18 in. or 20 in. long." On being re-examined he said that the deceased "had only put nuts on two bolts before. He had done no heavy work before that morning. It [I presume that he meant the nut] might only take six turns,"—that means, I presume, six turns to screw it up tight. Only two were in fact given. The time when a severe strain would be required had plainly not arrived. That was the applicant's case. The evidence given on her behalf leads in my view irresistibly to the conclusion that, having regard to the condition of the deceased the rupture of this aneurism and his subsequent sudden death were in the nature of things as certain, or if not certain as extremely probable a consequence of the exertion necessary in the ordinary performance of his work as anything could well be, and I think that no reasonable man could come to any other conclusion. For the defendants Dr Verral, who assisted Dr Winter, the applicant's witness, at the *post-mortem* examination, was examined, and he said that "the walls were thin and liable to go at any moment. There was a rupture in the aneurism. In my opinion, having regard to these facts, death might have occurred without any exertion at all." And in cross-examination he says—"I could not say one way or the other that his work had nothing to do with it. His aneurism had a very thin wall likely to break at any time, and more likely to break at the time of exertion. He was in such a condition that a very slight muscular exertion might bring about the rupture. He ought to have been in bed and not at work." And again—"He might have gone off without working. It is very probable that he might. I would not swear that his rupture had nothing to do with his work." On re-examination he said—"A serious heavy job would have led me to infer that it was due to the work, but the work in this case was of such a nature that I cannot infer one way or the other." Two experts—namely, Mr Montserrat and Professor Buchanan — corroborated this witness Dr Verral. The only two conclusions to which I think any reasonable man could come on that evidence are (1) that the natural termination of the disease, rupture, was reached unaffected by the work which the deceased was doing, or (2) that the work accelerated that termination. The strain was very slight. It could scarcely have been slighter if he was to do any work at all. The rupture was, as I have said, the certain or highly probable result of the slightest muscular exertion. It may not have been looked for or expected by the deceased, his employers, or his fellow-workmen. There is no evidence that he or they knew or suspected what his condition was, but the ignorance of such people cannot I think turn the inevitable or highly probable result of a diseased or hidden condition of body into an "accident." Neither in my opinion can the fact that the final catastrophe consisted in the rupture of a tissue do so if that rupture be known to be the certain or highly probable result of the malady. In order that the "mishap" should be "unlooked for" or the event be "unexpected," so as to make an injury an "injury by accident" within the meaning of this Act, the mishap must I think be "unlooked for" or the event be "unexpected" by some person with knowledge of the facts and capable of judging reasonably of them. The death of the deceased was, as it appears to me, no more an accident than if, had be been a butler, he had died while walking slowly up the stairs of the house in which he served, or, had he been a coachman, he had died while slowly mounting to his box. It may possibly be that it would be better in the interest of workmen that they should be entitled to compensation for all injuries which arise out of and in the course of their employment, however caused, though that is far from clear, since it might result in depriving of employment all who were in any way unsound or past their prime; but while the word "accident" remains in the statute force and meaning must be given to it in construing the statute, and much as we must sympathise with the claimant, I, for my part, am unable to see that anything which was not normal and most probable, if not certain, befell the deceased, and there was therefore no evidence upon which the County Court judge, as a reasonable man, could legitimately find as he has found. I therefore think that the appeal should be allowed.

Lord Collins—I am of opinion that this appeal must be dismissed. I agree with the Court of Appeal that the case is concluded by the authority of *Fenton* v. *Thorley* (*cit.*). In fact the argument for the appellants was substantially that which prevailed in the Court of Appeal in a series of cases which were overruled by that decision. One of those specially commented upon by Lord Macnaghten—*Hensey* v. *White*, [1900] 1 Q.B. 481—was in essentials identical with this case. The workman, who was in an unsound physical condition, ruptured himself in attempting to turn a wheel which proved too stiff for his physical powers. A *post-mortem* examination disclosed the fact that he had been suffering from chronic inflammation and congestion of the intestines, and to this, as the antecedent cause, one of the medical witnesses attributed the fatal result of the strain. The County Court judge had found as a fact that "the death was the result of chronic disease," and held that something beyond the mere fact that a long-standing disease had suddenly assumed a fatal form in consequence of the deceased doing his usual hard work in the usual way, was necessary in order to constitute an accident within the meaning of the Act. The Court of Appeal had affirmed this view. Lord Macnaghten in overruling this and a group of other cases says—"If a man in lifting a weight or trying to move something not easily moved were to strain a muscle, or rick his back, or rupture himself, the mishap in ordinary parlance would be described as an accident. Anybody would say that the man had met with an accident in lifting a weight or trying to move something too heavy for him." He then goes on to express his entire agreement with the decision in *Stewart* v. *Wilsons and Clyde Coal Company* (1902, 40 S.L.R. 80, 5 F. 120) and singles out for special approval a passage in the judgment of Lord M'Laren—"If a workman in the reasonable performance of his duties sustains a physical injury as the result of the work in which he is engaged . . . this is an accidental injury in the sense of the statute." Lord Lindley likewise expresses his approval of the same decision. In view of these authorities I cannot see that the Court of Appeal had any option of deciding otherwise than as it did in the present case.

Lord Shaw—In *Coe* v. *Fife Coal Company* (1909 S.C. 393, 46 S.L.R. 328), to which I shall afterwards more particularly refer, Lord President Dunedin uses this language —"I confess that I have found the case to be one of great delicacy and difficulty, with which one is not unfamiliar in the law, where one seems almost driven by the course of decisions, each of which gradually goes a little further than the one which preceded it, until at last you reach a point which, when the first decision was given, was probably not contemplated." These words, in which I entirely concur, aptly express my own situation in this case. When one has so to interpret an Act of Parliament as to put an interpretation upon interpretations of it, there is much danger of being landed very far away from the meaning of the statute itself; that danger in the present case is very real, and it is not lessened by the wish to accept and the necessity of accepting with complete loyalty the decisions of your Lordships' House. The evidence as to the unfortunate man's condition is thus stated by the County Court judge—"On a *post-mortem* examination it was found that there had existed a very large aneurism of the aorta, and death was attributed to rupture of the aorta. The aneurism was in such an advanced condition that it might have burst while the man was asleep, and very slight exertion or strain would have been sufficient to bring about a rupture." The man was engaged in tightening a nut with a spanner. As to "strain" in doing so, the judge says—"It was at all events not more than ordinary in such work, but the evidence satisfies me that such strain was sufficient to bring about the rupture of the aneurism, having regard to the man's condition at the time, and I find as a fact that the rupture was so brought about. In this case the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal." Apart from the facts so stated, the formal finding that the deceased died from injury caused by accident arising out of and in the course of his employment is clearly dependent upon the law, and it is pronounced by the learned Judge as he very properly states, "having regard to the general trend of the cases." This, and this alone, which has been treated as a determinate conclusion in fact, and in fact alone, I must respectfully decline to accept. Apart from these cases, and on these facts, I am of opinion that this workman did not die owing to injury by accident, but died of heart disease. There was nothing unusual or abnormal in the work, no strain "more than ordinary" was imposed or involved, no occurrence took place to intercept or even disturb the work or the workman; all that can be said is, that being at work and diseased, he died. His death was caused, in my view, not by any injury by accident, but simply by the disease under which he unhappily suffered. That is my opinion on the facts apart from the decisions, and having considered the latter with much anxiety and respect, and recognising to the full the delicacy of some of the distinctions drawn, I am confirmed in the opinion that neither in language nor intention does the Workmen's Compensation Act 1906 apply to this case. Your Lordships' House has, after considering the various decisions in lower courts, made three important pronouncements on this branch of the law. Remembering that the present case is one of the employee carrying about with him, so to speak, a fatal disease, I turn to see how far such a case is governed by these authorities. In *Fenton* v. *Thorley* (*cit.*) "a workman, employed to turn the wheel of a machine, ruptured himself," and it was held that compensation under the Act was due. So far as the condition of the workman was concerned, nothing more different from the facts in this case could be stated, because, as Lord Macnaghten points out, "Fenton was a man of ordinary health and strength." But the unexpected, totally unexpected, had happened, and Lord Macnaghten came to the conclusion that "the expression 'accident' is used in the popular and ordinary sense of the word, as denoting an unlooked for mishap or an untoward event which is not expected and designed." By anticipation Lord Macnaghten had warned commentators against making too wide a use of even this definition, and, in my opinion, he touched circumstances like the present closely when he said "the words 'by accident' are, I think, introduced parenthetically, as it were, to qualify the word 'injury,' confining it to a certain class of injuries, and excluding other injuries, as, for instance, injuries by disease or injuries self-inflicted by design." The other learned Lords all proceed on the same view, and Lord Robertson expressly says that the workman was a person of ordinary strength, while Lord Lindley also holds that there was an accident in the external sense that "the machine was accidentally put out of order," had been stopped by an "accident," &c., and he adds, "it is not necessary to consider whether the Act applies to cases in which the cause of the injury is not known, or in which the only unforeseen occurrence is the injury itself." It is sufficient to say of that case that the issue of disease, as alternative to accident, was not being dealt with or decided there. But if isolated passages are permissible, these would seem to show very clearly that a case of disease, like the present, was expressly treated as differentiated from that of *Fenton* and excluded from the Act. I observe that in *Fenton* v. *Thorley*, and also in *Ismay, Imrie, & Company* v. *Williamson* (46 S.L.R. 699, [1908] A.C. 437) a citation was made, as it has been made to-day, of a sentence from the judgment of Lord

M'Laren in *Stewart* v. *Wilsons and Clyde Coal Company* (*cit. sup.*) to the following effect — "If a workman in the reasonable performance of his duties sustains a physiological injury as the result of the work he is engaged in, I consider that this is accidental injury in the sense of the statute." I respectfully ask, to what argument were these observations directed? I do so because Lord M'Laren himself says expressly that his "observations will be confined to one point." The point was this, that it was argued that "an accident implied some agency external to the injured person." In displacing such a limitation of the statute (viz., to "some external, visible, or palpable cause — *e.g.*, the breakdown of machinery"), the learned Judge makes use of the observation so often quoted for much wider purposes, and the illustrations which he gives show most clearly on what single point he was remarking—*e.g.*, "the case of a railway servant engaged in shunting operations and crushed between two carriages without detriment to the carriages. Another illustration is the case of a man whose hand is crushed between wheels or rollers without any damage resulting to the machinery." These illustrations show, in my humble judgment, the extreme danger of using his concluding propositions as meant to cover an issue such as the present--viz., as between accident and pre-existing disease. That issue the next case —namely, *Brintons* v. *Turvey* (42 S.L.R. 862, [1905] A.C. 230)—approaches but does not reach. A workman sorting wool was infected by the bacillus of anthrax passing from the wool into his eye. The mischief was held to be clearly due to accident, or, as Lord Macnaghten put it, to a chapter of accidents; these caused the injury by setting up the disease to which the workman succumbed. There was no case whatsoever of the man having proceeded to work while already labouring under disease having its origin quite distinct, as here, from his work, nor any case even of acceleration of the effects of pre-existing disease, so that one can hardly regard the case as bearing upon the issue now before the House. It was maintained that this case, however, was in truth and substance governed by *Ismay, Imrie, & Company* v. *Williamson* (*cit.*). I have carefully and respectfully examined that decision. What had happened was that "a workman in a weak and emaciated condition while raking out ashes from under the boiler in the stokehold of a steamship received a heat stroke from the effect of which he died." On the point as to whether the man died from accident, Lord Loreburn, L.C., says — "What killed him was a heat stroke coming suddenly and unexpectedly upon him while at work. Such a stroke is an unusual effect of a known cause, often no doubt threatened, but generally averted by precautions, which experience in this instance had not taught." How unlooked for, how unexpected, the thing was appears from the facts as reported that "the doctor in a long experience had only known of four cases, and the engineer only of one." When I am asked to affirm from a case so very special as that that a general rule should be deduced to the effect that, if in the normal circumstances of normal work a diseased workman dies, the death is to be attributed to accident, I reply that I cannot do it. Further, I do not think that it was meant to be so applied. As I have shown, the judgment of this House in *Fenton* v. *Thorley* leans distinctly the opposite way. Lord Macnaghten, who delivered the leading judgment in *Fenton* v. *Thorley*, dissents from the conclusion of the Lord Chancellor and Lord Ashbourne in *Ismay, Imrie, & Company* v. *Williamson*. But the Lord Chancellor in that case expressly lends the weight of his authority to the decision of the House in *Fenton* v. *Thorley*. Lord Ashbourne dwells on the unlooked-for and unexpected nature of the occurrence, founds on Lord M'Laren's dictum to which I have referred, and distinctly reserves the general case when he observes—"I do not at all say that all diseases arising out of or in the course of employment should be regarded as a personal injury by accident." I am glad to be confirmed in the opinion I have formed by the decision of the Court of Session in *Coe* v. *Fife Coal Company* (*cit.*), and in particular by the analysis of the three decisions of this House just referred to made by that most experienced judge Lord Kinnear. In *Coe* v. *Fife Coal Company* "the cause of the appellant's incapacity for work was cardiac breakdown, due to the fact that the work in which he had been engaged was too heavy for him." It was held that the death could not be attributed to injury by accident. Dealing with the argument—also strongly pressed in this case—that the event was accident if "unexpected," "unlooked for," "unintended," &c., Lord Kinnear uses language as follows, which I very respectfully adopt —"It seems to me that all these interpretations of the word point to some particular event or occurrence which may happen at an ascertainable time, and is to be distinguished from the necessary and ordinary effect upon a man's constitution of the work in which he is engaged day by day. So defined, the word 'accident' seems to me to exclude the anticipated and necessary consequence of continuous labour." The present is, in my opinion, exactly such a case. Where disease is a result brought about by the employment itself—such as that of lead-workers—those cases are specially and separately dealt with as diseases, and what I may call liability on the employment is imposed. Nothing could more clearly indicate that in the passing of this Act Parliament did not mean, at least in the ordinary case, to include such cases within the category of accidents. In my opinion in the present case it is impossible for me to attribute this unfortunate and afflicted workman's death to injury by accident, as such a pronouncement, however prompted by compassion for those bereaved, would be erroneous in fact, and involve a liability which is not imposed either by the language or in the intention of the statute. Nor do I think it altogether without a bearing on the sound construction of the statute, that if a different interpretation be put upon the words cited, then a new peril will have been introduced into the lives of many workers who, notwithstanding debility and chronic disease, are most anxious and willing to devote their remaining powers to earning an independent livelihood. Should such persons be held to carry with them into and upon employment the serious additional liability alluded to, employment may become for such persons, often the most needy and deserving of the population, more difficult to obtain. I accordingly tender my dissent from the conclusions reached by the majority of your Lordships.

Appeal dismissed.

Counsel for Appellants—Simon, K.C.—Cuthbert—Smith. Agents—Barlow, Barlow, & Lyde, Solicitors.

Counsel for Respondent—Powell, K.C.—Stewart-Brown. Agents—Helder, Roberts, Walton, & Giles, Solicitors.

HOUSE OF LORDS.

Friday, March 18, 1910.

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

LECOUTURIER AND OTHERS *v.* REY AND OTHERS.

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

Trade-Mark—Transfer—Foreign Judicial Assignation—Secret Process—Property in English Trade-Mark.

A law of a foreign country and a sale by a foreign court under that law cannot affect property not within the foreign jurisdiction.

The French monastery of Chartreuse, which manufactured liqueurs of that name by a secret process, was compulsorily dissolved under a French statute and its property confiscated. It had owned trade-marks in France, England, and elsewhere. The Chartreuse monks established a manufacture of liqueurs in Spain employing the old process.

Held that the property in the English trade-mark was not affected by the French confiscation, and still remained with the Chartreuse monks.

The appellant Lecouturier was the official liquidator under French law of the monastery of Chartreuse, and two reciprocal actions were brought to determine the ownership in the English trade-marks formerly belonging to the monks of Chartreuse. The *circumstances* are narrated in the judgment of Lord Macnaghten. The respondents were the expelled monks of Chartreuse. Judgment against the appellant was pronounced by the Court of Appeal (LORD ALVERSTONE, C.J., BUCKLEY and KENNEDY, L.JJ.).

Their Lordships gave considered judgment as follows:—

LORD MACNAGHTEN—Your Lordships are all, I think, agreed in holding that the decision of the Court of Appeal in both these cases is perfectly right. The facts are not in dispute. The principle of law on which the respondents, who were plaintiffs in the action, rely is well settled. It has been recognised and asserted over and over again in this House. There is no feature of novelty about the case unless one is to be found in the circumstances which led immediately to this litigation. A religious community of great antiquity, known as the Order of Carthusian Monks, had until lately its principal seat and its headquarters near the Dauphiné Alps not far from Grenoble, in the Department of Isère in France, at a monastery known as "La Grande Chartreuse." There was the residence of the Prior-General of the Order, and there was manufactured according to a secret process a liqueur of several sorts and colours known all over the world as "Chartreuse." To this trade-name and to the insignia by which they designated their manufacture the monks had vindicated their exclusive right in many lawsuits in England, and they possessed several trade-marks on the English register standing in the name of their procurator Abbé Rey. In 1901 there was passed in France a law called the Law of Associations, which declared illegal all unlicensed religious associations failing to obtain within a limited period authorisation from the State. The monks of La Grande Chartreuse applied for the requisite authorisation, but they did not succeed in obtaining it. Thereupon in due course the monastery of La Grande Chartreuse with its dependencies in France was dissolved. The monks were forcibly expelled from the country and all their property in France, including their distillery and their French trade-marks, was confiscated and sold. The particulars of sale purported to comprise the commercial business of the monks and "the customers and goodwill attached to the business." But two things which belonged to them—the secret of their manufacturing process and the reputation which their liqueurs had acquired in foreign countries and notably in England—were incapable of being seized or confiscated. When they were expelled from France and exiled from their old home, the monks of La Grande Chartreuse carried with them the secret of their manufacture and the power of securing the benefit of the reputation which their skill had gained for them abroad. After their expulsion from France the monks of La Grande Chartreuse transferred the headquarters of their Order to Lucca, in Italy, but they set up their business in Tarragona, in Spain. There, having