authority from the arbitration clause contained in the original contract of sale between the appellants and the respondents and it had no authority to decide any matters other than those "arising out of" that contract. The question whether subsequently to the making of that contract there was in fact any assignment of any portion of the rights under that contract to Ghiron is a matter entirely outside the scope of the arbitration, and the arbitrator had no jurisdiction to deal with it. Moreover, the claim of the respondents to diminish the damages legally due under the contract is of the nature of a counter claim based on rights acquired subsequently to the contract by transactions with third parties. Whether or no in the Courts of the realm such matters could be brought in as an answer *pro tanto* to the appellants' claim with a view to avoid circuity of action is immaterial. No such course is permissible to a domestic tribunal of limited authority. The arbitrator ought therefore to have refused to go into any of the matters relating to the transactions between the respondents and Ghiron and to have confined himself to deciding the measure of damages under the contract independently of all such questions. I am of opinion, therefore, that this appeal should be allowed and that the appellants should have the costs here and in the Court below.

LORD PARKER concurred.

Their Lordships allowed the appeal.

Counsel for Appellants—Adair Roche, K.C.—Cuthbertson. Agents—Ince, Colt, Ince, & Roscoe, Solicitors.

Counsel for Respondents—Leck, K.C.—W. Norman Raeburn. Agents—Lowless & Company, Solicitors.

HOUSE OF LORDS.

Monday, April 6, 1914.

(Before the Lord Chancellor (Viscount Haldane), Earl Loreburn, Lords Dunedin, Atkinson, Shaw, Parker, and Reading.)

BOARD OF MANAGEMENT OF TRIM JOINT DISTRICT SCHOOL *v.* KELLY.

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

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *sec.* 1, *sub-sec.* 1—"*Accident*"—*Culpable Homicide*—"*Arising out of.*"

A schoolmaster at an industrial school, while performing his duties, was assaulted and killed by two of his pupils (who had formed a conspiracy for that purpose, and were afterwards tried and found guilty of manslaughter). A dependant having claimed compensation, the County Court Judge found that the deceased met his death by accident arising out of and in the course of his employment. *Held* (1) that his death was due to an accident, and (2) that there was evidence to support the finding of the arbitrator that the accident arose out of his employment.

Lords Dunedin, Atkinson, and Parker *dissented.*

Nisbet v. *Rayne & Burn*, [1910] 2 K.B. 689, and *Anderson* v. *Balfour*, [1910] 2 Ir. R. 497, *approved.*

Murray v. *Denholm & Company*, 1911 S.C. 1087, 48 S.L.R. 896, *overruled.*

The appeal was argued on the 24th and 25th November 1913 before Earl Loreburn and Lords Dunedin, Atkinson, and Shaw, but their Lordships required further argument, and the case was re-argued on the 23rd and 14th February 1914, the Lord Chancellor and Lords Parker and Reading being also present.

The *facts* are stated by their Lordships in their considered judgment, which was delivered as follows:—

LORD CHANCELLOR—This appeal raises a question of considerable importance as to the interpretation of the expression "accident arising out of and in the course of the employment" in the Workmen's Compensation Act 1906.

The circumstances in which the question has arisen are shortly as follows:—The respondent is the mother of one John Kelly, who was an assistant in the industrial school at Trim, and whose death was caused by injury sustained by him while superintending the scholars under his charge. It is not in dispute that the respondent was partially dependent on her son, or that if she was entitled to compensation for his death the amount awarded, £100, was a proper amount.

The proceedings out of which the appeal arises were taken under the Act referred to, and assumed the form of an application for arbitration which was heard by the County Court Judge of the county of Meath.

The deceased John Kelly, who was employed by the appellants, was on the 12th February 1912 superintending the boys in the school at exercise in the school yard when he was assaulted by several of them, and was struck with heavy wooden mallets. He died as the result of his injuries. The assault was premeditated and the outcome of a conspiracy among some of the boys to injure Kelly, who had punished or threatened to punish them, and who on the occasion in question was remonstrating with them.

The learned County Court Judge found that the occurrence was unforeseen, so far as the deceased was concerned, and that when he was assaulted he was doing his duty in remonstrating with the boys who had disobeyed him, and further that in what he did he was acting within the scope of his authority and in the course of his employment. There had been at least two previous assaults of a less serious kind on masters in this school, and the learned County Court Judge came to the conclusion that some of the boys were unruly and badly disposed, so that although what Kelly did was his

duty as a master it was attended with a certain risk. He held that what had happened to Kelly was an accident within the meaning of the Act, and that it arose out of and in the course of his employment. He awarded £100 as compensation.

It will be observed that the County Court Judge in making this award was, in accordance with the procedure which the Act prescribes, acting as an arbitrator. His award can therefore be set aside only if it is apparent that there was no evidence to support it, or if error in law appears on the face of it. If he has taken a wrong view of what the Act of Parliament means by "accident" this would be an error in law so apparent. But if he was right on this point, then as a result of an examination of the oral evidence on which he proceeded I am of opinion that it would be wrong to interfere with his finding that the accident arose out of and in the course of the employment. The real question in the case is therefore what the expression "accident" signifies in this statute.

Before alluding to the authorities on the point, and to what the Court of Appeal in Ireland decided, I wish to look at this question as if it were a new one. It seems to me important to bear in mind that "accident" is a word the meaning of which may vary according as the context varies. In criminal jurisprudence crime and accident are sharply divided by the presence or absence of *mens rea*. But in contracts such as those of marine insurance and of carriage by sea this is not so. In such cases the maxim *in jure non remota causa sed proxima spectatur* is applied. I need only refer your Lordships to what was laid down by Lord Herschell and Lord Bramwell when overruling the notion that a peril or an accident in such cases is what must happen without the fault of anybody in *Wilson* v. *Owners of The "Xantho,"* 1887, 12 A.C. 503.

It is therefore necessary in endeavouring to arrive at what is meant by "accident" to consider the context in which the word is introduced. The scope and purpose of that context may make the whole difference.

I turn therefore to the statute under consideration. Its purpose, as indicated in the title, is "to consolidate and amend the law with respect to compensation to workmen for injuries suffered in the course of their employment." Its principle as enacted in section 1 is to impose on the employer a general liability to pay compensation in case of personal injury by accident arising out of and in the course of the employment when caused to a workman. A distinction is drawn between the right to this compensation and the liability of the employer for injury caused by negligence. The two rights subsist together, but the workman must elect which he will enforce. The procedure is different—a statutory arbitration in the former case and an ordinary action at law in the latter. If the injury is attributable to the serious and wilful misconduct of the workman he cannot in ordinary cases claim compensation, but if death or serious and permanent disablement results compensation can be claimed. An approved scheme for compensation, benefit, or insurance, which may be in part contributory so far as the workman is concerned, can, with the approval of the Registrar of Friendly Societies and with the consent of the workman, be substituted for the scheme of the Act. Disablement or death occasioned by certain industrial diseases is put on the same footing as personal injury by accident as regards the right to compensation.

If we had to consider the principles of the Workmen's Compensation Act as *res integra* I should be of opinion that the principle was one more akin to insurance at the expense of the employer of the workman against accidents arising out of and in the course of his employment than to the imposition on the employer of liability for anything for which he might reasonably be made answerable on the ground that he ought to have foreseen and prevented it. I think that the fundamental conception is that of insurance in the true sense; and if so it appears to me to follow that in giving a meaning to "accident" in its context in such a scheme one would look naturally to the *proxima causa* of which Lord Herschell and Lord Bramwell spoke in connection with marine insurance, the kind of event which is unlooked for and sudden and causes personal injury, and is limited only by this, that it must arise out of and in the course of the employment. Behind this event it appears to me that the purpose of the statute renders it irrelevant to search for explanations or remoter causes, provided the circumstances bring it within the definition. No doubt the analogy of the insurance cases must not, as Lord Lindley points out in his judgment in *Fenton* v. *Thorley & Company*, [1903] A.C. 443, 41 S.L.R. 460, be applied so as to exclude from the cause of injury the accident that really caused it merely because an intermediate condition of the injury—in that case a rupture arising from an effort voluntarily made to move a defective machine—has intervened. If, so far as the workman is concerned, unexpected misfortune happens and injury is caused, he is to be indemnified. The important limitation which the statute seems to me to impose in the interest of the employer, who cannot escape from being a statutory insurer, is that the risk should have arisen out of and in the course of the employment.

It was, however, argued for the appellants that the definition of what accident means in this Act was determined differently by the judgments in this House in the case of *Fenton* v. *Thorley & Company*, to which I have just referred. But the House was not there considering an injury, unexpected by the workman, but caused by the intentional act of another person. Nor do I think that the expressions used in the judgments excluded such a case from the definition actually given of accident. After saying that the element of haphazard is not necessarily involved in the word "accidental," Lord Macnaghten defines "accident" as used in the Act "in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event

which is not expected or designed." I think that the context shows that in using the word "designed" he was referring to designed by the sufferer. Nor does the judgment of Lord Lindley, when closely considered, appear to me to support the argument for the appellants. What Lord Lindley was considering was a case of injury caused by a rupture due to unusual effort occasioned by unexpected difficulty in moving a wheel due to an accident to the machine. It was argued that the *proxima causa* was the unusual effort voluntarily put forth. But Lord Lindley was, as I have already said, of opinion that the personal injury was the rupture, and that the cause of it was the unintended and unexpected resistance of the wheel. He obviously meant unintended and unexpected by the workman. It is true that he said that "The rule that in contracts of insurance the proximate cause of loss can alone be regarded is carried so far that if it were rigidly applied to this Act of Parliament its evident object would in many cases be defeated." But he seems to me plainly to say this in order to make clear that the construction of the Act ought to be more liberal as regards the claims of the workman than would be the case if the Act were construed with the closeness which distinguishes the construction of words in a contract such as that of insurance. For after pointing out that the word accident is not in its general use a technical legal term with a clearly defined meaning, and that, speaking generally but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss, he goes on to say that the word is often used to denote any unintended and unexpected loss or hurt apart from its cause, and that if the cause is not known the loss or hurt itself would certainly be called an accident. He then goes on to say that in this statute the word is used in a very loose way. The title speaks of accidental injuries; sec. 1, sub-sec. 1, uses the expression "personal injury by accident." Personal negligence, and even a wilful act on the part of the employer or anyone for whom he is responsible, is not, Lord Lindley says, called an accident, but it is to be dealt with as if it were an accident. He goes on to say that it is impossible to read the Act without coming to the conclusion that the object of the Legislature was to throw upon certain classes of employers of labour the obligation to compensate their workmen for personal injuries for which such employers were not responsible before.

He held that as in the case before him the cause of the injury was known, and it was proved that the cause was an accident; it was not necessary to consider whether the Act applied to cases in which the cause of the injury was not known, or in which the only unforeseen occurrence was the personal injury itself. But, he added, if personal injury was caused to a workman, and it arose out of and in the course of an employment to which the Act applied, it appeared to him that *prima facie* the Act entitled the workman to compensation, though this inference might be displaced by proof that the injury was attributable to his own serious and wilful misconduct, or to some other cause which showed that the injury was not accidental.

If death or serious and permanent disablement results from the injury, even the fact that it is attributable to the workman's own serious and wilful misconduct does not shut him or his dependants out of the general right which the Act confers to compensation for injury by accident. Nor does the fact that the injury was caused by the wilful act of the employer or of some person for whom he was responsible shut it out. And I think that the language used in sub-sec. (2 *b*), where this is referred to, shows that the sub-section is introduced not because it was necessary for the extension of the definition of accident to such a case, but simply to make it clear that while the employers' liability, apart from the Act, remains unaffected, the employer is not to be under a double liability. The language used is introduced by way of proviso to the governing section, and the words used, especially in the conclusion of sub-sec. (2*b*), seem to me to confirm the view that accident is used in sec. 1 as including a mishap unexpected by the workman, irrespective of whether or not it was brought about by the wilful act of someone else.

I think that the language of the judgments in *Fenton* v. *Thorley*, so far from being authority which supports the argument addressed to us from the Bar for the appellants, really assists the contention of the respondent. For that language lays stress on the wide-reaching scope of the statute in question. It shows how that scope extends the liability it embraces beyond liability for negligence, and covers a field akin to statutory insurance against injury to the workman arising out of and in the course of his employment, provided that injury is something not expected or designed by the workman himself. I think that this conclusion as to what the Legislature intended by its language is strengthened by section 8, which places disablement from certain industrial diseases on the same footing as the happening of an accident. This provision seems to show that what the Legislature had in view as a general object to be attained was the compensation of the workman who suffers misfortune.

If the object of this statute be as wide as I gather from the study of its language, its construction must, as it appears to me, be that accident includes any injury which is not expected or designed by the workman himself. If so, the Court of Appeal in England was right in its decision in *Nisbet* v. *Rayne & Burn*, [1910] 2 K.B. 689, that the definition extended to a case of death by murder, and that the Court of Appeal in Ireland was right in *Anderson* v. *Balfour*, [1910] 2 Ir. R. 497, and in the present case, in taking a similar view of the meaning of "accident." To take a different view appears to me to amount, in the language of Mathew, L.J., in *Challis* v. *London and South-Western Railway Company*, [1905] 2 K.B. 154, to the reading into the Act of a

proviso that an accident is not to be deemed within it if it arises from the mischievous act of a person not in the service of the employer.

The Second Division of the Court of Session refused to follow these decisions in *Murray* v. *Denholm & Company*, 1911 S.C. 1087, 48 S.L.R. 896. But I think, for reasons I have already given, that the Lord Justice-Clerk misinterpreted Lord Macnaghten's judgment in *Fenton* v. *Thorley* when he read it as meaning that the expression "accident" cannot be applied to accident arising out of wilful crime. And I am confirmed in my view of the unrestricted rendering of the meaning of the word which I attribute to Lord Macnaghten by reading his subsequent judgment in *Clover, Clayton & Company* v. *Hughes*, [1910] A.C. 242, 47 S.L.R. 885, where he speaks of the "far-reaching application of the word," and intimates that what was held in *Fenton* v. *Thorley & Company*, was that "injury" and "accident" were not to be separated, and that "injury by accident" meant nothing more than accidental injury or accident as the word is popularly used.

In the present case the facts leave little doubt on my mind that from one point of view at all events Kelly met with what may properly be described as an accident, and it was not the less an accident in an ordinary and popular sense in which the word is often used merely for the reason that it was caused by deliberate violence. For the rest I have no doubt that there was evidence on which the arbitrator could find, as he did, that the accident so defined arose out of and in the course of the employment.

I am therefore of opinion that the appeal should be dismissed with costs.

I will only add that I have not arrived at this conclusion without examining a number of authorities which I have not referred to specifically. Having regard to the conflict which exists between judicial opinions expressed in some of the decided cases, the only safe guide appears to me to be the language of the Act of Parliament itself. It is on what I conceive to be the dominating purpose that appears in the language of the Legislature that I base my own view.

EARL LOREBURN — In my opinion the order appealed from was right. This unfortunate man was killed because it was his duty to maintain discipline in a school, and while he was actually doing his duty there. There had been a conspiracy among the boys to assault and wound him because he did his duty, and in pursuance of the conspiracy two of the boys struck him a fatal blow. With all respect to those who hold a contrary opinion, I think the County Court Judge was entitled in these circumstances to say that John Kelly perished from "personal injury by accident arising out of and in the course of his employment."

A good deal was said about the word "accident." Etymologically the word means something that happens—a rendering that is not very helpful. We are to construe it in the popular sense, as plain people would understand it, but we are also to construe it in its setting in the context, and in the light of the purpose which appears from the Act itself. Now there is no single rigid meaning in the common use of the word. Mankind have taken the liberty of using it, as they use so many other words, not in any exact sense but in a somewhat confused way, or rather in a variety of ways.

We say that someone met a friend in the street quite by accident as opposed to appointment, or omitted to mention something by accident as opposed to intention, or that he is disabled by an accident as opposed to disease, or made a discovery by accident as opposed to search or reasoned experiment. When people use this word they are usually thinking of some definite event which is unexpected, but it is not so always, for you might say of a person that he is foolish as a rule and wise only by accident. Again, the same thing when occurring to a man in one kind of employment would not be called accident, but would be so described if it occurred to another not similarly employed. A soldier shot in battle is not killed by accident, in common parlance. An inhabitant trying to escape from the field might be shot by accident. It makes all the difference that the occupation of the two was different. In short, the common meaning of this word is ruled neither by logic nor by etymology, but by custom, and no formula will precisely express its usage for all cases.

Counsel for the appellants ably urged upon us that this man could not have been killed by accident because he was struck by design. Suppose some ruffian laid a log on the rails and wrecked a train, is the guard who has been injured excluded from the Act? Is a gamekeeper who is shot by poachers excluded from the Act? There was design enough in either case, and of the worst kind, In either case I should have thought, if you looked at the nature of the man's employment, you might say he was injured by what was accident in that employment. When Lord Macnaghten, in *Fenton* v. *Thorley & Company*, [1903] A.C. 445, 41 S.L.R. 460, spoke of the occurrence being "undesigned," I think he meant undesigned by the injured person. One cannot imagine its being said of a suicide that he was killed by accident. I find that to treat the word accident as though the Act meant to contrast it with design would exclude from what I am sure was an intended benefit numbers of cases which are to my mind obviously within the mischief. That makes me realise the value of the old rule about construing a remedial statute. Just as in the case of the guard or the gamekeeper, so here this man was injured by what was accident in the employment in which he was engaged. It is not the less so that the person who inflicted the injury acted deliberately.

I think you might also say that he was killed by accident because the boys did not intend to kill him. But I put my opinion on the other ground.

I cannot attach weight to another argu-

ment of counsel for the appellants that the risk of being killed by schoolboys is not to be regarded as incidental to or arising out of a schoolmaster's employment because no one would contemplate so extraordinary an occurrence. This argument illustrates the danger of trying to convey what an Act means by using expressions which are not found in it. I do not repent of having myself, as have other judges, in trying to convey my thoughts, spoken of risks incidental to an employment, but that does not mean merely risks which ordinarily occur in it. For the future, however, in order to prevent misapprehension, I shall confine myself to the actual words of the text. The words are "arising out of." Whether a particular mishap is likely to occur or likely to be feared or foreseen seems to me a different matter.

In inquiring whether or not an injury by accident in fact arises out of the employment, it surely is unnecessary to ask whether such a thing has ever happened before or is likely to happen again within, say, a hundred years, or for that matter for ever. It may happen, and has happened, because the poor man was a schoolmaster. The event has proved that it was a risk of his employment. I can see no reason for saying that there is to be compensation only when the misadventure was one which could be foreseen as probable, or contemplated as possible, or otherwise apprehended either by the workman or by his employer, or by a County Court Judge. All this has in my view no conclusive bearing on the simple question, Did it in fact arise out of the employment?

I am not at all surprised that the County Court Judge found as he did. I think he was right, which, however, does not matter, because we have only to say whether the evidence justified the award.

LORD DUNEDIN—The question here is whether the County Court Judge, sitting as an arbitrator under the Workmen's Compensation Act, had a right to find, as he did, that the deceased John Kelly, who was beaten to death by the boys of the industrial school of which he was an assistant master, met his death in respect of an accident arising out of and in the course of his employment.

I take it that your Lordships are all agreed that the composite expression used in sec. 1 (1) of the Act, "personal injury by accident arising out of and in the course of the employment," must be taken as a whole. Inasmuch, however, as it is impossible to discuss different considerations at the same time, and—to use a simile—inasmuch as the strength of a chain is always represented by its weakest link, there is, I think, no harm in treating the matter, as has indeed been done by your Lordship on the Woolsack, in separate compartments, and in considering separately what is an accident, and whether any particular occurrence, if an accident, does arise out of and in the course of the employment. At the same time eventually the question that has to be answered is—to borrow a convenient expression from another branch of law—whether the occurrence in question fits the whole combination, not whether it fits a subordinate integer thereof.

A great deal of the argument turned upon the expressions used in the well-known case of *Fenton* v. *Thorley & Company*, and particularly upon those used by Lord Macnaghten. This was natural enough, because that case was the first which dealt authoritatively in this House with the topic of what is an accident in the sense of the Act, and because the particular expression used by Lord Macnaghten has been frequently quoted and adopted as authoritative by other judges in subsequent cases.

The passage so often quoted is where Lord Macnaghten, summing up his remarks, says—"I come, therefore, 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 or designed."

I think these words are a perfectly accurate pronouncement, but I do not propose to treat them as authoritative for several reasons. In the first place, as I had occasion to point out in the recent case of *Plumb* v. *Cobden Flour Mills Company*, [1914] A.C. 62, 51 S.L.R. 861—with the approval of those of your Lordships who took part in the judgment—the ultimate criterion must always be found in the words of the Act itself, and not in tests, explanations, or definitions given by judges, however eminent. In the second place Lord Macnaghten was not giving a definition, as he himself pointed out in the subsequent case of *Clover, Clayton, & Company* v. *Hughes*, 1910 A.C. 242, 47 S.L.R. 885. In the third place, all phrases used by judges must be taken *secundum subjectam materiem*, and the class of "design" with which we have to do here was not in question in that case. It was indeed pointed out that in an earlier passage Lord Macnaghten speaks of injuries self-inflicted by design. I am not moved by that. That sentence is illustrative, not comprehensive, for it is introduced by the words "as for instance." The sentence I first quoted expresses in terms a general conclusion which sums up the whole discussion, and while I agree it must be conceded that the expression used cannot be taken authoritatively to decide a point which was not then in argument, yet it will be well to remember that persons who use accurate language may formulate a general rule which is quite accurate in its application to cases outside that which was at the moment under discussion.

There was, however, one matter of completely general application which I conceive was authoritatively decided by *Fenton* v. *Thorley & Company*, and that was that the expression "injury by accident" in the statute must be interpreted according to the meaning of the words in ordinary popular language. Lord Macnaghten says so in the passage quoted. He reiterates it solemnly in *Clover, Clayton, & Company* v. *Hughes*, when he says—"It is not perhaps quite accurate to say that in that case"

(*i.e.*, *Fenton* v. *Thorley & Company*) "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." Lord Davey, in *Fenton* v. *Thorley & Company*, concurred in Lord Macnaghten's judgment. Lord Shand says—"I agree with my noble and learned friend (Lord Macnaghten) in thinking that the words 'personal injury by accident' and 'accident' are used in the statute in the popular and ordinary sense of these words." Lord Robertson, without actually using the expression "popular," put his argument in this sentence—"No one out of a law court would ever hesitate to say that this man met with an accident," which is obviously as much as to apply the "popular language" test. Lord Halsbury, in *Brintons Limited* v. *Turvey*, [1905] A.C. 230, 42 S.L.R. 862, says—"One proposition . . . appears to have been accepted by all the judicial minds which have been directed to the subject, and that is, that the language of the statute we are called upon to construe must be interpreted in its ordinary and popular meaning." In *Ismay, Imrie, & Company* v. *Williamson*, [1908] A.C. 437, 46 S.L.R. 699, Lord Loreburn referred to *Fenton* v. *Thorley & Company* as a conclusive authority and summed up his view of the facts by saying—"In common language it is a case of accidental death." And in *Clover, Clayton, & Company* v. *Hughes* he took as conclusive what Lord Macnaghten had said in *Fenton* v. *Thorley & Company*. Lord Ashbourne in *Ismay, Imrie, & Company* v. *Williamson*, and Lord Atkinson and Lord Shaw in *Clover, Clayton, & Company* v. *Hughes*, all accept the same view, though differing in the application of the particular facts, that the word "accident" must be read in its popular sense. I forbear to quote from judgments of the learned Judges in the Court of Appeal and the Court of Session. As was necessary, they accepted what they conceived the members of the House of Lords had decided in *Fenton* v. *Thorley & Company* and reiterated on so many other occasions.

Now there is no authoritative test of what is the meaning of popular language. On such a matter we are bound to take our own personal experience as persons well acquainted with popular language. For myself I confess that it seems so clear that in popular language the injury in this case was not an injury caused by accident, that it is difficult for me to use terms which might not appear wanting in respect to those who have expressed themselves otherwise.

It must be conceded that the injury here was caused by design. That is to say, there was an intention to inflict an injury. To my thinking, the word accident in popular language is the very antithesis of design. I brush aside at once all argument as to acts of conscious volition. The design must be design to inflict the injury, not design to do the act which may, as it turns out, be the cause of the injury. Popular language bears me out in this distinction. If a workman kicks a brick off a scaffold and it happens to hit and injure a man below, popular language would say he had met with an accident. Popular language in this case, I maintain, would never say that Kelly met his death by accident. It would say that he was murdered. In so doing it might not be positively accurate. The crime as a crime may possibly not be murder but only manslaughter, as, indeed, a jury found. But whether murder or manslaughter matters not. Both terms are negative of accident in the popular sense. And here I would like to say that in my view criminal law has nothing to do with the matter. Criminal law has nothing to do with the *mens rea*. When one says that popular language would describe this as murder, that is because the narrator of what had happened would naturally use a positive expression which according to his view fitted the facts. The point is that he would not use the expression accident because he would consider it inappropriate. Suppose A attacked B and was shot by B in self-defence, there would be no *mens rea* in B and no crime. None the less, no one popularly would describe A's death as a death by accident.

Let me now pause to examine the judicial dicta on the matter. In the present case we get no assistance from the judgments of the Court below because the Court of Appeal admittedly decided the case on authority. They held themselves bound by their own decision in the case of *Anderson* v. *Balfour*, [1910] 2 Ir. R. 497, and studiously avoided giving their own opinions. They had with them the support of the English decision in *Nisbet* v. *Rayne & Burn*, [1910] 2 K.B. 689, and against them the Scotch decision in *Murray* v. *Denholm & Company*, 1911 S.C. 1087, 48 S.L.R. 896.

Now these three cases exhaust the instances where the question of design to cause the injury as excluding accident came into question. I took the trouble to examine every case in Butterworth's Compensation Cases (New Series) to ascertain whether I was warranted in making this statement. I exclude *Challis* v. *London & South-Western Railway*, [1905] 2 K.B. 154, because there it is clear that there was no evidence whatever that the boy designed to injure the engine driver. I also exclude all such cases as *Baird & Company* v. *Burley*, 1908 S.C. 545, 45 S.L.R. 416; *Fitzgerald* v. *Clarke*, [1908] 2 K.B. 796, *Armitage* v. *Lancashire and Yorkshire Railway*, [1902] 2 K.B. 178; *Blake* v. *Head*, 5 B.W.C.C. 303, 106 L.T.R. 822, and others, where there was sufficient to decide the case upon the point that the accident, if accident it was, did not arise out of the employment. Reverting, then, to the three cases, it will be found that the three Scottish Judges were in favour of the view that a designed injury cannot be called an injury by accident. I would especially refer to the judgment of Lord Dundas in the case of *Murray* v. *Denholm & Company*, as it, in my view, sets forth with precise accuracy what has been laid down by this House, and puts the matter on the true footing of deciding by the ordinary use of popular language. The same view is taken by Cherry, L.J., in *Anderson*

v. *Balfour*. "In the everyday language of educated people," says that learned Judge, "an effect is said to be 'accidental' where, and only where, the act by which it is caused is not done with the intention of causing it." If I might substitute the word "ordinary" for "educated" I would humbly accept this description of popular language as correct.

There remain of the opposite opinion the Lord Chancellor of Ireland (Walker, C.) and Holmes, L.J., in *Anderson* v. *Balfour*, and Cozens-Hardy, M.R., and Farwell and Kennedy, L.JJ., in *Nisbet* v. *Rayne & Burn*.

Taking *Anderson* v. *Balfour* first I find that the judgments of the Lord Chancellor and Holmes, L.J., are based on two considerations. The first is that accident, according to its derivation from the Latin, means anything that happens—an occurrence—and the Lord Chancellor quotes for this the Century Dictionary. That accident in its original meaning might be a mere occurrence may be admitted, but that that represents the popular meaning in 1897 or 1906 I entirely deny. And if dictionaries are to be appealed to it is worthy of note the editors of the great "Oxford Dictionary" – a work of far greater authority than "The Century"—have, in accordance with quotations sought and found, attached to this meaning of the word the sign "obsolete." The other reason they give is that the point is ruled by *Challis* v. *London and South-Western Railway*. That it certainly is not for the reason already stated. Further, Holmes, L.J., says that he agrees that in popular language assault would not be called an accident, but that he thinks the term in the Act bears a meaning other than the popular meaning. With great deference, that seems to me to be directly in the teeth of what this House decided in *Fenton* v. *Thorley & Company*, and upheld in the other cases above cited.

I now pass to the opinions of the English Court of Appeal in *Nisbet* v. *Rayne & Burn*. The judgments are short. The Master of the Rolls puts his judgment on this, that it is an accident "from the point of view of the injured man," and then he goes upon the authority of *Challis* v. *London and South-Western Railway*, and of *Anderson* v. *Balfour*.

I am bound to say, with the greatest respect, as I know the expression is used also by some of your Lordships, that I am quite unable to appreciate the method of considering the meaning of the words "from the point of view" of the injured man. It is a good retort to say that it is not an accident "from the point of view" of the employer, who knows quite well it was designed. And if it is not, it is only, I humbly think, because the "point of view" of the injured man or of the employer, or of the perpetrator of the deed, are all equally irrelevant considerations. The only point of view which I consider relevant is the point of view of the Legislature, because the only question is, What did Parliament mean by the expression when it put it into the Act of 1897 and repeated it in the Act of 1906?

Farwell, L.J., dealing with the same view, admits that murder is not usually spoken of as accident, and gives what I humbly think a fanciful explanation of why people would say that Desdemona was murdered. I have already said why I think people would use that phrase. They might well use others so long as they were positively describing the occurrence. They might say for instance that she was strangled by Othello. But the point of it is that they would *not* say, as Farwell, L.J., admits, that she died by accident. He also goes on *Challis* v. *London and South-Western Railway Company*.

Last comes Kennedy, L.J. He takes the right view of the last-mentioned case, and then instancing the death of Rizzio as a non-accidental death, goes on to say—"But whilst the description of death by murderous violence as an 'accident' cannot honestly be said to accord with the common understanding of the word, *wherein is implied a negation of wilfulness and intention* [the italics are mine], I conceive it to be my duty rather to stretch the meaning of the word from the narrower to the wider sense of which it is inherently and etymologically capable—that is, 'any unforeseen and untoward event producing personal harm'—than to exclude from the operation of this section a class of injury which it is quite unreasonable to suppose that the Legislature did not intend to include within it."

Now if language means anything, this means that the learned Lord Justice deliberately abandons what he admits to be the popular meaning of the word — which according to the judgment of the House he was bound to take—in order to give effect to what he considers the scope and object of the statute. I can scarcely conceive a proceeding more illegitimate.

Let me say a word as to this topic of the scope of the statute. It is said to aid the argument in favour of the enlarged meaning of accident to consider that the statute introduced a system of compulsory insurance of the workman by his employer. Again, with great deference I cannot see that by this statute the argument is forwarded one whit—insurance let it be, but insurance against what? In a contract you find an answer to this question in the terms of the policy. Here the policy is the Act of Parliament, and by an interpretation of its terms you stand or fall. So that it only comes back to the same question, What is the meaning of the word as used? As for further speculations, these, I humbly think, are entirely outside our province. I shall only say that if judges were to indulge in speculations and reminiscences we should probably find that such speculations and reminiscences did not altogether tally. But clearly we have nothing to do with such matters. Parliament might have left out the word accident. It did not do so. On the contrary, it put it in, as Lord Macnaghten said, with the approbation of all the other Lords in *Fenton* v. *Thorley & Company*, "parenthetically as it were, to qualify the

word 'injury,' confining it to a certain class of injuries and excluding other classes," and we have got to interpret it; and in interpreting it I would like to say that I agree with Lord Atkinson, whose judgment I have had the advantage of reading, that the interpretation of accident given by the appellants really cuts the word accident out of the Act. I only do not enlarge on this point because it has been handled in a manner by my noble and learned friend which entirely satisfies me, and I wish to spare your Lordships a needless repetition. I would only add that to argue as was done that "accident" was necessarily inserted in order to exclude "self-inflicted injuries by design" seems to me out of the question. A self-inflicted injury by design would always be effectively excluded by the other condition "arising out of the employment," for I cannot conceive any employment in which it is an incident that a man should intend to hurt himself.

I will now say a few words as to the finding that this was an accident arising out of the employment. It is said that this is found as a matter of fact, and that consequently we cannot interfere unless there was no evidence to support the finding. As to the general proposition that an appeal only lies as to law, and not as to fact, there is no doubt. But with deference I consider that a finding that an accident arose out of employment is not a finding of fact merely because it is found "as a fact." It may be a finding of mixed fact and law. I do not think it matters, because I am content to deal with the question as to whether there was evidence to support this finding. The finding itself in its ultimate form is really an inference from facts.

Now while I think that there was evidence to support the view (although I might not agree with it) that in this particular school, looking to its history, there was risk of a blow being given by an unruly boy, I do not think that there was any evidence that there was any risk of a deliberate conspiracy to attack. The fallacy seems to me to consist in assuming that the moment you can label two things by the same name, viz., assault, these two things become the same. To spit in a person's face is an assault. If there had been evidence only that a boy had so spat at the master, I do not think it would follow that assault and battery was one of the risks of the employment. That of course is a more extreme case than this, but on the evidence I am of opinion that the arbitrator ought not reasonably to have come to the conclusion, from the history of the slight incidents proved, that subjection to a regular conspiracy to injure was a risk of this employment.

On the whole matter I put to myself the entire question in the words of the statute, Was what Kelly suffered an injury by accident arising out of and in the course of his employment? and remembering the repeated decisions of this House, that I am to take the language in the ordinary popular meaning, I answer unhesitatingly, No. The opposite view, with great deference, seems to me to distort the words used from this ordinary popular meaning in order to fit a conceived view of the general intentions of the Legislature, or in other words, to assert in more cautious language what Kennedy, L.J., asserted in plain but incautious language in *Nisbet* v. *Rayne & Burn*, that he proposed to do, viz., "to stretch the meaning of the word." That, in my humble judgment, is to legislate and not to interpret.

I am of opinion that the appeal should be allowed.

LORD ATKINSON—The main facts of this case have been already stated.

In order to form an opinion as to the likelihood of outbreaks of turbulence or violence occurring in this school, or of anyone engaged in its management contemplating such outbreaks as probable, and therefore to determine what risks were reasonably incidental to the employment of such a person as the deceased, it is necessary to bear in mind what was the class of person from which pupils of the school came, what the character of their general conduct, and what the history of the school. I assume that this was not an industrial school established under the Statute 31 and 32 Vict. c. 25, nor a reformatory school established under the 59th chapter of the statutes of the same year. Its boy inmates, therefore, were not necessarily persons who had either actually committed crime or from their mode of life and surroundings were likely to lapse into crime. The headmaster, Mr Samuel Kelly, was examined as a witness. He had filled his post for twenty-two years. During that time several generations of boys must have passed through the school. There does not appear to me to be in the evidence any justification for the insinuation that he was stating what he did not believe to be true, or exaggerating in any way the peaceful character of the school.

He stated that an assault had been made upon him, he believed, by a boy named Reilly some twelve months before John Kelly's death. The actual words were—"He tried to prevent a boy getting out, and in coming downstairs he, Kelly, hurt his back. He never could tell whether he got a blow or not, but was told he was struck on the back by a boy Reilly." He further said that this boy and another were inclined to be unruly before this assault on him, but that before the attack on Mr Kelly he could see nothing wrong. This witness had on 17th May 1911 made a confidential report in reference to this occurrence to the board of management. This report was obtained from the clerk of the board. The witness was not cross-examined upon it, nor was his attention directed to any portion of its contents, nor was it used to contradict him, but upon some principle of which I am ignorant it was on behalf of the applicant, whose witness the writer was, entered as substantive evidence of the truth of the statements contained in it. It was plainly inadmissible for such a purpose, but it does not appear to me to carry the matter further than did the evidence of the headmaster. He further denied that the boys generally were unruly; said that not more than one or two were

inclined to be unruly, that none of those connected with the school ever saw things otherwise than this, that the boys were not bad boys in any way, that a Mr Murtagh was assaulted some years before this occurrence by a boy who had left the school. He further stated that if a junior master heard of anything unruly in the conduct of the boys it would be his duty to report it to him, the witness, and that the deceased never had reported to him anything to that effect.

Mr Joseph Murtagh, an assistant master who had held that post for ten years, was also produced. He stated that a boy who had since gone out into the world and was doing well had struck him on the head with his (the boy's) hand, that it was a slight assault, that he was nothing the worse for it, that he immediately reported it to the headmaster, that the boy was punished. This witness, like the last, was examined on behalf of the applicant, on whom the burden of proof lay, and not a single question was put to him as to the general conduct of the boys for any period antecedent to the attack on the deceased. On that point the evidence of the headmaster remained unchallenged, and in my view, if it be fairly considered, it leads one to the conclusion that up to the time of the attack upon the deceased the inmates of the school were not unruly, turbulent, or violent, and that no one acquainted with the school could reasonably have anticipated that such an occurrence as this criminal attack upon Mr Kelly would ever take place.

The next matter of fact which in my view it is important to consider is the premeditation of the attack, the concerted preparation for it, as well as its violence.

Three pupils of the school, namely, James Brennan, John Contan, and Edward Harte, were examined on behalf of the appellants on the subject of the attack.

Their evidence appears to me to lead irresistibly to the conclusion that there was formed amongst these schoolboys or some of them, peaceful though they may have been before, a deliberate conspiracy to assail the deceased, that in pursuance of that conspiracy they subsequently did assail him, and did inflict upon him injuries which immediately caused his death. It may be that they did not intend to kill him—most probably they did not—but the attack was very violent and most deliberate. If the injury which caused this unfortunate man's death be a "personal injury by accident" within the meaning of the Workmen's Compensation Act, then the most cold-blooded assassination, however elaborately planned and deliberately carried out, must equally be treated as "personal injury by accident" within the meaning of that statute. Now what is the finding of the County Court Judge as to the nature of this conspiracy? It is stated in these words—"It is evident from the facts proved that there was a conspiracy among a certain number of the boys to do an injury to Mr Kelly. It was spoken of by and between them during the day, yet not a word of warning or a protest was uttered by one of them; they determined to commit this assault upon him because he caught and remonstrated with one of them stealing and interfered with their place of hockey playing."

That finding is abundantly supported by the evidence. For the purposes of this case the criminal character of the act and the fatal nature of the result are in a sense immaterial. The same considerations would apply if the deceased had recovered. The first and most important question then is, Were the injuries so inflicted "personal injuries by accident," or taking them collectively, a "personal injury by accident," within the meaning of the Workmen's Compensation Act 1906?"

It has been again and again decided by your Lordships' House that the language of the Workmen's Compensation Act of 1906, like that of its predecessor the Act of 1897, is to be interpreted in its ordinary and popular meaning. In *Brintons Limited* v. *Turvey*, [1905] A.C. 230, 42 S.L.R. 862, Lord Halsbury says that this proposition has "been accepted by all the judicial minds which have been, directed to the subject." And in *Clover, Clayton, & Company, Limited* v. *Hughes*, [1910] A.C. 242, 47 S.L.R. 862, Lord Macnaghten, when speaking of the much criticised definition of the word "accident" which he was supposed to have laid down in *Fenton* v. *Thorley & Company*, 1903 A.C. 743, 41 S.L.R. 460, is reported to have used these words—"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."

If this be so, then if there is to be any finality in these matters, it was, I think, from the date of the first of these decisions and still is the duty of every tribunal in this kingdom, including your Lordships' House, to accept these decisions and to apply loyally the principle they established. So that your Lordship's task in the present case is not in my view the difficult if not impossible one of framing a definition of the word "accident" or of the compound expression "injury by accident" to fit all cases which may arise under the Workmen's Compensation Act of 1906, but rather to determine whether in this particular case the premeditated crime deliberately committed in pursuance of a conspiracy can be described, according to the ordinary and popular meaning of language as an "accident," or the injury inflicted by the criminals on their victim as an "injury by accident" within the meaning of this statute. To me it appears that the question only admits of an answer in the negative. I thoroughly concur with Kennedy, L.J., when he lays it down, as he did in *Nisbet* v. *Rayne & Burn*, [1910] 2 K.B. 689, that "the description of death by murderous violence as an 'accident' cannot honestly be said to accord with the common understanding of the word wherein is implied a negation of wilfulness and intention." Where I, with all respect, differ entirely from him is in thinking that in the face of these repeated decisions of this House it was open to him deliberately to reject the

meaning which he admitted the word "accident" bore according to the common understanding, and to give to it another and a wholly different meaning in order to give effect to a supposed intention of the Legislature, which, speaking for myself, I fail to find either expressed or implied in the only place it can legitimately be sought for, namely, the provisions of the statute itself.

This phrase "injury by accident"—at least when applied to an injury inflicted by the act of an agent external to the workman himself—means, I think, an injury caused by an accident. The accident in such a case must be the cause—the proximate cause—I think, of the injury—the injury the effect of that cause. This is clearly the view of the noble and learned Lords who took part in the decision in this House of the anthrax case—*Brintons Limited* v. *Turvey*. Lord Halsbury says the Act of 1897 meant that "the industry itself should be taxed with an obligation to indemnify the sufferer for what was an 'accident' causing damage." Lower down on the same page he uses these words—"but when some affection of our physical frame is in any way induced by an accident, we must be on our guard that we are not misled by medical phrases to alter the proper application of the phrase 'accident causing injury' because the injury inflicted by the accident sets up a condition of things which medical men describe as disease."

Lord Macnaghten says—"It is plain that the mischief which befell the workman in the present case was due to accident, or rather I should say, to a chapter of accidents," and he then proceeds to enumerate the several accidents to which the resulting injury was due. And Lord Lindley used these words—"The fact that an accident causes injury in the shape of disease does not render the cause not an accident. Whether in any particular case an injury in the shape of disease is caused by an accident or by some other cause depends on the circumstances of that case and on the meaning to be attributed to the word 'accident.'"

In *Ismay, Imrie, & Company* v. *Williamson*, [1908] A.C. 437, 46 S.L.R. 699—the heat-stroke case—Lord Loreburn used these words—"In my view this man died from an accident. 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."

I should, therefore, have thought that where the injury is inflicted by the action of an agent external to the sufferer himself, and especially, as in this case, by human agents, this was obvious, and I should not have referred to these authorities, which might be multiplied, were it not that in argument it seemed to me to have been suggested that there is some peculiar and occult meaning concealed in this phrase "injury by accident." It is to be remembered that in *Fenton* v. *Thorley & Company* Lord Macnaghten was dealing with the case of an injury self-inflicted in the sense that the workman wilfully and deliberately did the act which caused the injury, that is, made a violent exertion which caused the rupture, but he did not intend or design to rupture himself or expect that he would rupture himself.

The workman thus filled two capacities. He was at once the doer of the act and the sufferer from it, and it certainly would appear to me that in Lord Macnaghten's so-called definition of the word "accident," the words "not expected or designed," if they applied to the workman at all, applied to him in the character of the doer of the act which caused the injury rather than in that of the sufferer from the injury. He further stated that the expression "injury by accident" was equivalent to the expression "accidental injury," and that the words "arising out of and in the course of his employment" qualified this compound expression "personal injury by accident," not the word "injury" by itself nor the word "accident by itself.

Clover, Clayton, & Company v. *Hughes* was also a case of an injury self-inflicted in the sense I have mentioned. The workman, by his exertion in turning a nut with his fingers ruptured an aneurism of his aorta. Lord Loreburn in giving judgment, after having accepted the supposed definition of Lord Macnaghten, said—"The first question is whether or not the learned Judge was entitled to regard the rupture as an 'accident' within the meaning of the 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." If by this latter passage it is meant that the character of the untoward event is to be judged of by a man of ordinary sense and understanding other than the workman, who knew the nature of the latter's work, I thoroughly concur; but if it means that this matter is to depend on whether or not the person injured expected the occurrence of the "untoward event" I respectfully dissent. Where by the deliberate act of a third party who intends to injure a particular workman, an injury is actually inflicted upon that workman, the question whether the act of the third party is an "accident" or not, and the injury an "injury by accident" or not, cannot, I think, depend upon whether the workman expected or did not expect that act to be done or that injury to be inflicted. Were it otherwise this result would follow:—If, for instance, two workmen in a factory, desiring to be revenged upon a foreman for having reported them to their employer for misconduct, should, without giving him any warning, or saying or doing anything to cause him to apprehend violence from them, stealthily assail him and wound him, the injury done would be an injury by acci-

dent because he had not expected the attack; but if the workmen had threatened him with violence and he had lived in a constant state of apprehension that they would assail him, then the injuries they inflicted upon him would not be injuries by accident because he had expected the attack which caused them; or, again, the "untoward event" would in the case of a dull, stolid, unapprehensive man be an accident, because he did not expect it, while in the case of a nervous, imaginative, and apprehensive man the same "event" would not be an accident because he did expect it. I cannot think that a construction of the statute leading to a result so absurd can be a sound construction.

I dwell upon this point because of an expression used by Collins, M.R., in *Challis* v. *London and South-Western Railway Company*, [1905] 2 K.B. 154, and substantially repeated by the Master of the Rolls and Farwell, L.J., in *Nisbet* v. *Rayne & Burn*. In the first of these cases Collins, M.R., said—"I do not think there was anything in the fact that the stone was wilfully dropped to prevent what happened being an accident from the standpoint of the person who suffered it." In the latter case Cozens-Hardy, M.R., said—"I think it was an accident from the point of view of Nisbet," the man who was shot. And Farwell, L.J., said—"But the intention to murder is immaterial; so far as any intention on the part of the victim is concerned his death was accidental, and although it is true that one would not in ordinary parlance say, for example, that Desdemona died by accident," &c. The learned Lord Justice goes on to give what, with all respect, appears to me to be a rather fanciful reason why people in ordinary parlance would not describe a deliberate murder as an accident. These expressions as to the "standpoint," "the point of view," and "the intention" of the victim, used in the connection in which they were used, are unintelligible to me unless they mean that the injury inflicted was not an injury by accident because the victim did not expect to be injured or did not intend that he should be injured. If so I think that view unsound.

In *Anderson* v. *Balfour*, [1910] 2 Ir. R. 497, the Irish Lord Chancellor's judgment seems to be based on *Challis* v. *London and South-Western Railway Company*, but Holmes, L.J., seems to go still further in the above-mentioned direction. He said—"I agree, however, that an assault would not now be called 'an accident,' and that in modern language 'accidental' is used in contrast with 'intentional.' But it does not follow that the present and other cases I have suggested are not accidents within the meaning of this section. The statute deals with what are regarded as accidents from the point of view of master and servant, and when they are defined by judges as something unforeseen, unexpected, and out of the usual or normal course of things these words must be taken in connection with the employment." In other words, he decided that the word "accident," as used in this section, must have given to it a special meaning depending on the special point of view of both master and servant, not merely on that of the latter alone as suggested in the English cases, wholly differing from its ordinary and popular meaning. With all respect that is the very thing which this House has many times decided must not be done. The decision in *Nisbet* v. *Ragne & Burn*, as well as that in *Anderson* v. *Balfour*, is, I think, in reality based upon *Challis* v. *London and South-Western Railway Company*. In my view, both of these are quite distinguishable from that case. First, because in that latter case there was no evidence whatever that the boy who dropped the stone upon the train intended to hit or harm the engine-driver or any other person, whereas the injuries in both the former cases were deliberate and intentional; and second, because in ordinary parlance the injury in the last case would be described as an accident, and in other cases it would not be so described.

In my view, therefore, the decisions in both these cases were erroneous. I think, on the other hand, that the Scotch case of *Murray* v. *Denholm & Company*, 1911 S.C. 1087, 48 S.L.R. 896, was well decided. In *Blake* v. *Head*, 5 B.W.C.C., 106 L.T.R. 822, Cozens-Hardy, M.R., speaking of the deliberate homicide of an errand boy by his master, said—"Personally I do not think there was an accident at all. The assault by Head was an intentional felonious act, and the injury certainly did not arise out of the employment." The case was, no doubt, decided on this latter ground, but I wish to express my thorough concurrence wiih the view of the Master of the Rolls that this intentional homicide was not an accident.

Lord Lindley in *Fenton* v. *Thorley & Company* described the object of the statute thus:—He said—"The object of the Legislature was to throw upon certain classes of employers of labour the obligation to compensate their workmen for personal injuries for which their employers were not responsible before, and it becomes necessary to determine what injuries are within the Act and what are not." He laid it down that section 1, sub-section 1, was the governing section, and then proceeded to consider what was meant by "personal injury by accident." It has been suggested that the policy of the Act was to insure the workman against loss. But against what loss? It would appear to me that the answer must be against the loss sustained by "personal injury by accident." There is not a line in the Act that I can find indicating that compensation is to be given for loss of any other kind. I fail therefore to see how the assumption that the above is the policy of the Act, even if it be a sound assumption, helps one to determine what is the proper meaning of the words "personal injury by accident," or to justify the giving to those words of a meaning which is other than their ordinary and popular meaning, or, least of all, to justify the construing of this section as if the word "accident" had been omitted from it. Nothing would have been easier for the Legislature than to have

omitted the word "accident" if it desired to insure the workmen against loss by all personal injuries arising out of and in the course of their employment. That has not been done. The word is there, and must have some force and effect given to it.

Well, in the present case the cause of the injury was a known cause. It consisted in this, that one of the conspirators hit the deceased on the head with what proved to be a deadly weapon—a scrub. The effect was not an unusual effect of such a blow, namely, a fracture of the skull of the victim. Any person of ordinary sense and intelligence might well expect it would be caused by the blow. The injury therefore is neither the effect of an unknown cause nor the unusual effect of a known cause. The blow was given deliberately and by design, and I cannot think that any person who saw the act done or heard of its having been done, and who was accustomed to express himself in ordinary popular language, would describe it as an accident. No doubt pupils in schools do not usually commit violent assaults upon their masters. The occurrence was therefore abnormal, but it is, I think, impossible to hold that every untoward event which is not normal is accidental.

It was admitted in argument, as I understood, and indeed as is self-evident, that if a workman deliberately and intentionally injures himself or commits suicide his injury or death could not be said to arise out of his employment. That being so, the question was put to counsel during the argument—If the judgment appealed from and those authorities on which it rests be sound, what injury to a workman arising out of and in the course of his employment can be held not to be "an injury by accident?" No answer was given to that question. To realise the difficulty of giving an answer it is only necessary to enumerate roughly the classes of injuries arising out of and in the course of a workman's employment which have been held to fall within this section of the Act. If while actually doing, or by sleeping, taking food, or otherwise legitimately preparing or putting himself into a state and position to do, that particular business of his employer which it is his duty to do, he be injured through his own negligence, or that of his master, or of his fellow-servant, or by a violent exertion of his own, or by the influence of any external agent or force, animate or inanimate, from an anthrax bacillus to a heat-wave with which he may be brought into contact in that business, or by any fall to the ground or against any object while similarly engaged, or if he be injured by the act of some third person done wilfully, but without being directed against him particularly, or done without the intention to injure him as in *Challis*' case, all these occurrences *ex hypothesi* arising out of and in the course of his employment would be within the statute, and, putting aside wilful misconduct in all cases where death does not ensue, would entitle him to compensation. If cases such as the present, where he is injured by the wilful, designed, and premeditated attack of a third party, be added to this list, then I cannot myself conceive any case in which an injury arising out of and in the course of the workman's employment would not fall within the section, and the reason for this is in my view plain. It is this, that to construe this section of the statute of 1906 so as to cover cases like the present is in effect to eliminate the word 'accident' from it altogether and to read it as if it ran—"A personal injury arising out of and in the course of his employment." It may be desirable that the section should so run. On that point I express no opinion, but it does not so run; the word "accident" is contained in it. To construe the statute as if it were not there, even for the most benevolent object, is not, I think, permissible. It amounts in my view to legislating, not interpreting or declaring the law.

Having formed this opinion on this matter, it is unnecessary for me to deal at length with the point as to whether the injury to the deceased arose out of and in the course of his employment. The County Court Judge had no doubt found as a fact that the accident did arise not only out of the deceased's employment, but also in the course of his employment. Counsel for the respondent contended that this being a finding of fact was conclusive if there be evidence to support it, and that there is nothing more to be said on the point. I think that that contention is erroneous. This finding is a finding on a mixed question of law and fact, not of fact alone. It involves a decision on the proper construction of the section of the statute, and also a decision whether the evidence given brings the case within the provisions of the statute so construed. If the County Court Judge should put a false construction on the statute, misdirect himself as it is styled in a point of law, then his finding that the evidence brought the case within the statute so falsely construed would be of no avail whatever. The case of *Barnes* v. *Nunnery Colliery Company* (1912 A.C. 44, 49 S.L.R. 688) is an instance of this.

The fault I find with the findings of the learned County Court Judge on this point is this, that he appears to have judged of the conduct of the pupils of this school, and of the risk incident to an assistant master's employment in it, solely by reference to this murderous attack upon the deceased to the exclusion of the whole history of the school for the twenty-two years preceding. There was nothing in that history I think to lead anyone to anticipate that an attack such as was made upon the deceased would ever be made. I have therefore great difficulty in coming to the conclusion that the risk of such an outbreak of violence taking place was a risk reasonably incidental to the deceased's employment. If the matter be judged by this oft-applied test, the inclination of my opinion is that the injury by accident, if it was an injury by accident, did not arise out of the employment of the deceased.

Lord Lindley answered by anticipation in his judgment in *Fenton* v. *Thorley & Company*, already quoted, the point made

by counsel for the respondent on section 1, sub-section (*b*), of this statute. The statute did not enact that an injury caused by the wilful act or default of an employer, or of those for whom he was responsible, was an accident within the meaning of this section, but to prevent multiplicity of suit it enabled the workman to sue under the Workmen's Compensation Act for the compensation to which he might be entitled under Lord Campbell's Act as if it were such an accident, preserving, however, to the workman his right to sue independently of the Act in any case where the injury was caused by personal negligence, wilful act, or default.

On the whole, therefore, I am of opinion that the judgment appealed from was erroneous and should be reversed, and this appeal allowed, with costs.

LORD SHAW—The material facts in this case are not in dispute. On the 12th February 1912 the respondent's son was acting as an assistant master in the Trim Joint District School. This was an industrial school established for the training of children of the Meath and other union workhouses. There were placed upon the deceased as assistant schoolmaster certain duties of superintendence, management, and control, and it was his duty to exercise these both in school and in the playground.

On the evening of the day mentioned the deceased, when walking through a shed in the school grounds, was attacked by several of the boys of the school; they assaulted him with hurly sticks, and one of them in particular hit him with what is known as a scrub. The skull of the unfortunate master was fractured, and he died.

There can be no doubt that the attack was deliberate. As is explained clearly in the case for the appellants, the boys were angry with the deceased for various reasons. One was because he had stopped them from playing hurly in the school yard, another because he had caught one of them stealing.

During the trial the learned County Court Judge heard evidence bearing upon this assault and also upon previous assaults made by boys upon the masters. These had not been frequent nor serious. A letter however was, without objection, produced by Mr Samuel Kelly, the headmaster of the school, dated the 17th February 1911; and it no doubt appeared to the County Court Judge, as it also appears to me, to be of some importance. It is in the nature of a confidential report to the board of management, and in it the headmaster narrates that he "had to take extreme measures during the past month to put down immoral conduct which sought to get a foothold in this school among a small section of our boys." Among other things he reports that on the night of the 30th January he himself was assaulted in the sick ward, that he hurt himself in capturing a boy, who, however, escaped and was not found for two days, and that on the 13th he had again severely to punish another boy. He remarks on the signs of insubordination, and upon how he had placed himself in communication with the police. "I have now," he adds, "this conduct completely under control"—a state of matters which, however, did not appear to have been permanent. As already mentioned, there was a certain hostility to the deceased also, and it does not seem doubtful that the attack upon him was planned and was by way of revenge against him as, in the opinion of the boys, too strict a disciplinarian.

There has been much discussion at your Lordships' Bar and in the Courts below as to whether this unhappy occurrence was an accident. The contention, of course, is that once it is displaced from the category of accidents, the Workmen's Compensation Act cannot apply to it. This line of argument, however, is at times accompanied by, and apt to lapse into, a fallacy. Courts of law are not engaged in speculating upon what is an accident in general. They are engaged in solving a problem which is at once much more composite and much more specific; they are engaged in determining whether under section 1 of the Workmen's Compensation Act "in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman."

I make this initial protest because it appears to me that the whole of this provision of the statute is apt to suffer and to be misread if it is merely analytically and not synthetically treated. It has been pointed out more than once that even the term "accident" does not in any view stand by itself. The expression is "injury by accident," and, as Lord Macnaghten has explained, it is accidental injury that is being dealt with and not accident *per se*.

In the next place, I must decline to entertain the proposition that the terms employed in the statute have not to be accepted by courts at first hand, but that in lieu thereof there must be accepted equivalent or analogous terms which must be taken to be the "definition," say, of the term "accident." The outstanding case of maltreatment (if I may put the term so strongly) of a judicial dictum in our own times has been upon this topic. It has been asserted over and over again in the courts of each of the three kingdoms that Lord Macnaghten in *Fenton* v. *Thorley & Company*, [1903] A.C. 443, 41 S.L.R. 460, defined the term "accident," and that his definition is classical, is conclusive, and can for legal purposes be taken as standing for what the statute contains.

Lord Macnaghten undoubtedly said—"I come 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 or designed." But, in the first place, it has to be remembered that this sentence was used immediately after and in connection with another, viz.—"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 classes, as,

for instance, injuries by disease or injuries self-inflicted by design." This points clearly to his use of the word "design" being restricted to cases of self-inflicted injuries. It would almost appear that this restriction by Lord Macnaghten himself has been completely lost sight of; and it is at least due to Lord Macnaghten to say that he himself gave no countenance to the wider use that has been made of his language. In *Clover, Clayton, & Company* v. *Hughes*, [1910] A.C. 242, 42 S.L.R. 885, Lord Macnaghten said—"It is not perhaps quite accurate to say that in that case a definition of the term 'accident' was hazarded." His Lordship is there referring to what has been put into his language as a definition, and he adds—"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." Almost in the same breath Lord Macnaghten expressed approval of a dictum of A. L. Smith, L.J., who speaks of "accident" as meaning "any unforeseen circumstance, however caused, occurring to" a workman "in the discharge of his duty in the company's service." Of this I am certain, that the so-called definition was never meant to be an exclusion from the term "accident" of everything that happens by design.

I am of opinion that there is no necessary exclusion of what occurs by design from the category of injury by accident as that term is used in section 1 of the Workmen's Compensation Act. It has to be remarked that if the word "accident" were so construed, that is to say, by excluding all occurrences which were designed, it would seem to me to be inconsistent with its common application to a great part of the law of tort in England. Counsel for the respondent was I think justified in referring to Lord Campbell's Act (9 and 10 Vict. c. 93), which stands in the Statute Book under the title of "An Act to compensate the families of persons killed by accident," and under which compensation is given for what is caused by wrongful act, neglect, or default. I have never heard of a proposal to exclude from the category of accidents in which relief was sought under Lord Campbell's Act any act which was wilful, intentional, or deliberate. These are the worst kind of wrongful acts. They are the cause of loss or damage in innumerable cases, and yet, according to the argument submitted, the English Statute Book completely misnamed this remedial statute by taking all deaths from such occurrences as the deaths of persons killed by accident. When, over and over again, it is announced that the words of the Workmen's Compensation Act must be construed according to their ordinary and popular signification I entirely agree, but I think it is surely part of that popular and ordinary signification that for seventy years in England the word "accident" has been publicly and descriptively used as inclusive of occurrences intentionally caused. I will not carry the controversy into the wider literary field, because in that field the interest is apt to exceed the relevancy. Judges have girded at Farwell, L.J.'s instance of Desdemona's murder, and I do not disagree with them. But I should have thought on the other hand that when a certain "unvarnished tale" was delivered "of moving accidents by flood and field," the term put into the mouth of Othello was hardly meant to be exclusive of the points of wilful onset, of seizure by "the insolent foe," or of any other intended and "distressful stroke."

But the synthesis must be carried further. "Injury by accident" cannot be treated apart from the fact that it is such injury by accident which is caused to a workman arising out of and in the course of his employment that is the subject of the legislation. Every part of this cumulative expression may bear upon the other. And an easy instance of the value of such collocation arises to assist the solution of the problem of whether a designed occurrence falls within the term accident. For the point of view of the Legislature is seen from the composite expression to be the workman's point of view. And it is to be observed that what occurs to the workman may from his point of view be plainly an accident although some mischievous person may have designedly caused the occurrence.

This is well illustrated in *Challis* v. *London and South-Western Railway Company*, [1905] 2 K.B. 154—the case of a stone which was intentionally dropped from a bridge on a passing train. As Collins, M.R., observed—"I do not think that there was anything in the fact that the stone was wilfully dropped to prevent what happened from being an accident from the standpoint of the person who suffered from it." This language was adopted by Walker, L.C., in the case of *Anderson* v. *Balfour*, [1910] 2 Ir. R. 497, of which I approve and to which I will presently refer. But in the case of *Nisbet* v. *Rayne & Burn*, [1910] 2 K.B. 689, the same view, namely, that "accident" to an employee may include what was an occurrence designed by someone else, is taken. That was the case of a cashier who while travelling by rail to a colliery with a large sum of money for the payment of the workmen, was robbed and murdered, and Cozens-Hardy, M.R., says—"I think it was an accident from the point of view of Nisbet"—that is, the servant. And Farwell, L.J., says this—"It is argued, first, that there was no 'accident' at all, because death resulted from the intentional act of the murderer, and intention excludes any idea of accident. But the intention of the murderer is immaterial. So far as any intention on the part of the victim was concerned, his death was accidental." I am humbly of opinion that both *Anderson* v. *Balfour* and *Nisbet* v. *Rayne & Burn* were rightly decided.

Nor does the term "accident" become divorced from its ordinary significance by this reasoning. If a train is deliberately derailed, with the result of lives being lost or passengers injured, the whole of these consequences are perfectly properly denominated deaths or injuries in a train accident.

But the synthesis must still proceed, and

for the same reason, that each portion of the combined expression helps to clarify the other. The nature of the employment must also be looked to, because it appears to me—and here the present case is very closely approached—that it may be a vital and determining factor in the consideration of the question at issue whether the nature of the employment was such as to allow of the occurrence being treated as an injury by accident to the servant. Some employments are practically unaccompanied with danger from wilful occurrences, others are so accompanied. In the case of a warder in a prison, he may, with certain classes of prisoners, require to go armed, and to be in constant watch over the preservation of his own life. He hopes to succeed, and possibly in ninety-nine cases out of a hundred he does, but in the hundredth case an accident takes place, and his injuries on such an occasion fall within the very risks which attach to his employment. They have been wilfully caused, but his hope and expectation was that he would survive uninjured. When the occurrence takes place, however, it is properly denominated as an accident arising out of his employment. Take, again, an attendant in an asylum placed in charge of dangerous lunatics. He is aware that at any moment not one but all of those over whom he has control may individually or in combination turn and injure him. I do not think it would be in any sense straining the popular meaning of the words to say that such an attendant had been injured by accident arising out of and in the course of his employment. Such accidents, in short, spoken of in that general language, were the very things that were taken account of as possible when he made his contract of service. Take a third case—the case of a gamekeeper who in the course of his duty has to watch over the property committed to his charge as against the marauding of poachers. Injury or loss of life to him on such an occasion would, in my opinion, be properly classed as an accident arising out of and in the course of his employment, and, as I say, I think the Irish case of *Anderson* v. *Balfour* to that effect was properly decided.

The stage of the argument thus reached is that, even although the discussion were confined to the term "accident," that term would not be exclusive of designed occurrences, or even necessarily of deliberate crimes, these last depending, as has been seen, to some extent on the nature of the employment. I am therefore of opinion in the present case that that part of the argument fails.

I have had more difficulty with regard to the question whether this accident, which undoubtedly arose in the course of the deceased's employment, also arose out of it. But the illustrations which I have given of the warder, the asylum attendant, the gamekeeper, show that the question as relating to the employment is one of degree. The question is whether the circumstances of this case and the nature of the employment of the late Mr Kelly were such as to permit it to be stated that he died by injury from accident arising out of that employment. It is a question of circumstances, and, as I have put it, a question of degree. If it is said that the case of a prison, an asylum, or a game preserve should not be extended to the case of a school, the answer is—it depends upon the circumstances and upon the school. One could conceive certain portions at least of a reformatory school to which the principle would manifestly apply. Did it accordingly—for that is the question—apply to the circumstances and the case of the Trim Industrial School?

Upon this part of the matter the statute comes to our aid. The statute has recognised the possible variation in the circumstances, and in degree, and it has laid upon the County Court Judge, acting as arbitrator, to determine the question as one of fact. I accordingly hold that it is not open to us, as a Court of law, if as a question of fact this has been substantively determined in the one way or in the other, to overturn that finding. If it was a question of law, or even of mixed law and fact, it would be different; but when it is a question of degree, of circumstances and of fact alone, our interference would be in the nature of a usurpation of the province committed definitely by the Legislature to the County Court Judge as final arbitrator.

This House has frequently had to consider this subject in its bearing upon the question of dependency, and I do not repeat the views which I have more than once enunciated upon that subject, to the effect that whether dependency exists or whether it is total or partial—all these are questions of fact. But the House has adopted precisely the same attitude with regard to the question of whether the injury by accident arose out of the employment. That was one of the difficulties in the much-contested case of *Clover, Clayton, & Company* v. *Hughes*, where a man suffering from a dangerous aneurism fell down dead when fastening a nut with a spanner. Lord Macnaghten put the question thus—"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 there was sufficient evidence to support that finding, although I do not say I should have come to the same conclusion myself."

That appears to me to be a line of helpful guidance for courts of law. *Warner* v. *Couchman*, [1912] A.C. 35, 49 S.L.R. 681, was the case of a journeyman baker whose hand had been injured by frostbites while driving on his round in his employer's cart in the course of his duty. As Lord Loreburn said —"I see nothing in the evidence which disentitled him to find that fact, and being so found as a fact it is binding." And if I may cite my own view, "The findings of the learned County Court Judge are really two in number—first, negatively, he has found that this unfortunate workman was not injured by accident arising out of his employment; secondly, positively, he has found that being set to ordinary outdoor

work, he was injured by the severity of the weather. Both of these findings are findings of fact. I do not think that it is the province of a Court of Appeal to disturb such findings." It is unnecessary to examine from this point of view the cases further, except to say that the judgment of Lord Kinnear in *Henderson* v. *Glasgow Corporation*, 1900, 2 F. 1127, 37 S.L.R. 857, has, I understand, always been considered of the greatest weight in Scotland. It was expressly approved and it was largely quoted in the decision of *Low or Jackson* v. *General Steam Navigation Company*, [1909] A.C. 523, 46 S.L.R. 901, in this House. One passage in that judgment I will venture once more to cite—"It has sometimes been said that the question in that kind of case is raised in very much the same way as if we were asked to consider a hypothetical charge given by the Sheriff or Judge to himself as a jury, and to find that he had given himself a wrong direction. But then that kind of question never can arise when the Sheriff says in so many words, 'I think this is a question of fact, and I decide it upon the facts. I have not proceeded upon law at all.'"

I think that is how the law stands with regard to this point, and I think the present case is exactly of that kind.

It remains only to inquire whether the arbitrator's finding on this matter of fact was come to without evidence. Upon this point I must cite in the first place the clear manner in which the County Court Judge has stated the point himself. With regard to whether the occurrence was an accident he expresses himself guardedly, and undoubtedly presents a question of mixed fact and law, for he says—"I am of opinion and hold as a matter of fact that the occurrence amounted to an accident within the authority of the decisions of the two cases referred to." This in terms raised the whole legal situation and upon that head of the matter your Lordships are determining the point. But with regard to whether the accident arose out of his employment the learned County Court Judge takes—and in my opinion was justified in taking—a different line. He narrates the various facts upon which he proceeded; he gives the substance of the evidence as laid before him; he considers the assaults on the masters from time to time, and the facts which led up to Mr Kelly's death; he concludes that the masters had to deal with boys some of whom were unruly, vicious, and badly disposed; he considers that some of them were dangerous; and he says that he has "come to the conclusion that there was a certain risk of violence known to Kelly from certain of the boys attendant on his position as master," and he concludes by finding "as a matter of fact the accident arose out of his employment." I do not feel myself free to say that he came to a wrong conclusion, and I certainly do not think that there was not evidence in the case upon which such a conclusion could have been reached. The learned arbitrator appears to have handled the case with care. I do not think he made any mistake in law, and I am of opinion that his findings in his own province, that of fact, cannot be disturbed.

For these reasons I think that the judgment of the Court of Appeal should stand.

LORD PARKER—But for the difference of opinion which exists among your Lordships, and but for a certain mental confusion induced by perusing a number of reported decisions, I should have felt far less hesitation in advising your Lordships in this case.

The Workmen's Compensation Act 1897 was a new departure in legislation. It conferred on "workmen"—that is to say, on all persons (with certain exceptions) who have entered into or work under contracts of service or apprenticeship with an employer—the advantage of being insured at the employer's expense against certain kinds of personal injury. There is absolutely nothing except the words used in the Act itself which can throw any light on the kinds of personal injury to which its provisions were intended to apply. There is no pre-existing policy of the Legislature by reference to which the provisions of the Act can be interpreted.

The Act of 1897 was amended in an unimportant particular by the Workmen's Compensation Act 1900, but both Acts were repealed and, with certain modifications, re-enacted by the Workmen's Compensation Act 1906, the Act now in force. The words of the first Act which describe the kinds of injury against which workmen are to be insured at the cost of their employers remain unaltered in the Act of 1906, and the modifications introduced by the latter Act do not affect their meaning. They are as follows:—"Personal injury by accident arising out of and in the course of the employment." The Act contains no definition which throws any light on the meaning of these words. Applying, therefore, the ordinary canon of construction, they must be interpreted according to their ordinary meaning. Indeed in an Act which confers a benefit on workmen and imposes a corresponding liability on employers there is a specially strong presumption that the words used are intended to bear their ordinary meaning so as to be readily understood by the parties concerned, workmen and employers alike.

When, therefore, a question arises as to whether some particular personal injury is an injury by accident within the Act the question ought, in my opinion, to be decided in the affirmative or in the negative according to whether the particular personal injury can or cannot, without straining or departing from the ordinary meaning of the words used, be described as an "injury by accident" or, to use a linguistic equivalent, "an accidental injury." A process of interpretation which proceeds first to define or analyse the various elements denoted or connoted by the words "injury by accident" or "accidental injury," and then considers how far the particular personal injury in question is within this definition or involves these elements, is not only, in my opinion, a wrong process, but one extremely liable to lead to error. Thus

it was at one time argued that "injury by accident" necessarily involves (1) an injury, and (2) an accident causing the injury, and from this it was sought to draw the inference that a workman who strained his back in lifting a heavy weight or ruptured himself in endeavouring to turn a stiff wheel did not suffer an injury by accident within the meaning of the Act, for though he suffered injury it did not arise by reason of any accident but by reason of something done or attempted with deliberate intention.

Obviously the result of such a process of reasoning would be to exclude from the Act many personal injuries which are ordinarily described as accidental, and accordingly it was finally determined by your Lordships' House in *Fenton* v. *Thorley & Company*, [1903] A.C. 443, 41 S.L.R. 460, as I understand the decision, that such a process of reasoning was fallacious.

It would, in my opinion, have been none the less fallacious had it resulted in including among injuries by accident, injuries which, according to the ordinary use of language could never be described as accidental. Indeed if it be once admitted that the words "injury by accident" is in the Act used according to its popular meaning any definition of accident which either excludes injuries commonly described as accidental, or includes injuries which, according to the ordinary use of language, are never so described, is demonstrably an imperfect definition.

I will now ask your Lordships to consider the facts of this case. They may be stated as follows:—John Kelly was employed by the appellants as assistant master in an industrial school of which the appellants were the managers. He had the misfortune to incur the ill-will of the boys under his charge, and some of those boys conspired together to assault and injure him. They did assault him, and they injured him so effectually that he died of the injuries they inflicted. Is his mother entitled to compensation? As I have already indicated, it appears to me that this question can only be answered by considering whether John Kelly can, without any misuse of language, be said to have been accidentally injured or accidentally killed. In my humble judgment, having regard to the circumstances under which the injuries were inflicted and the death occurred, no one could without a serious misuse of language describe either the injuries themselves or the death which resulted from them as accidental. Such a description would not only conceal but would positively misrepresent the true facts.

How then is it proposed to show that these injuries and this death, which in no ordinary sense of the word can be described as accidental, are injuries by accident within the meaning of the Act? The arguments to this effect may be stated as follows:—

First (it is said) an injury to be accidental must be more or less sudden, more or less unexpected, and not self-inflicted. Kelly's injuries fulfil these conditions, and are therefore accidental. I have purposely stated this argument in such a way that the fallacy is apparent. In order to preclude the fallacy, the major premise should be to the effect that every injury which is more or less sudden, more or less unexpected, and not self-inflicted, is an accident within the Act, but in so framing the major premise you in fact abandon all idea of interpreting the Act according to the ordinary meaning of the words, and introduce a special and somewhat arbitrary definition clause which extends the popular meaning of the word "accident" so as to embrace what in ordinary language would never be described as accidental. The process of interpretation you employ is precisely that process which is condemned in *Fenton* v. *Thorley & Company*, although in the present case it operates in favour of and not against the interests of the workman. Had the Legislature intended that workmen should be insured at their employers' expense against all injuries more or less sudden, more or less unexpected, and not self-inflicted, it was easy enough to say so.

Secondly, the case for the respondent was based on the reasoning which prevailed in the English Court of Appeal in *Nisbet* v. *Rayne & Burn*, 1910, 2 K.B. 689. It was argued that had Kelly been injured or killed by a blow aimed at another he would undoubtedly have been injured or killed by accident. The fact that the blow was aimed at him is, "from his point of view," quite immaterial (Cozens-Hardy, M.R.). Indeed but for the fact that our logic is misled by our moral indignation, we might, although in fact we do not, call injury or death feloniously inflicted accidental injury or accidental death (Farwell, L.J.). It is unreasonable to suppose that the Legislature intended to draw so refined a distinction, and this justifies some departure from the ordinary meaning of the words used (Kennedy, L.J.). It appears to me that any argument framed on these lines not only abandons the principle of interpreting the Act according to the ordinary meaning of the words used, but substitutes a method of interpretation based upon what, in the opinion of individual judges, the Legislature may be reasonably supposed to have intended—a method which, in my judgment, is without any justification at all.

Thirdly, it was suggested that the Act discloses an intention that workmen should be insured by their employers against all classes of personal injury arising out of and in the course of the employment, unless such injuries can be proved to have occurred otherwise than by accident, the *onus* of proof of which lies on the employer. With all due deference to what was said by Lord Lindley in advising the House in *Fenton* v. *Thorley & Company*, I am unable to apprehend any valid ground for this suggestion. The Act imposes on employers a liability to insure their workmen from personal injuries which are (1) accidental, and (2) arise out of and in the course of the employment, and I see no reason for imputing to the Legislature any further or other intention. There are injuries arising out of and in the course of the employment which are not accidental, and accidental injuries which do not arise out of or in the course of the employ-

ment. I cannot see how the fact that an injury arises out of and in the course of the employment can raise any legitimate presumption that it is accidental any more than the fact that it is accidental can raise any legitimate presumption that it arises out of or in the course of the employment. Much less do I see how proof of one of the conditions necessary to render the employer liable can shift the *onus probandi* as to the other.

Lastly, it was argued that injury by accident was none the less injury by accident because the accident was the result of such criminal negligence as would justify a verdict of manslaughter. In this I agree, because the ordinary use of the word "accidental" would cover such a case, but I am unable to follow the inference sought to be drawn from this premise to the effect that all injuries inflicted feloniously must necessarily be accidental, though no one using the word in its ordinary meaning would so describe them.

There is another important question arising on this appeal. Even assuming, contrary to my own opinion, that Kelly's injuries were accidental within the meaning of the Act, can they be said to have arisen out of and in the course of his employment? I hesitate to come to that conclusion. It would, I think, be a libel on the industrial schools of the United Kingdom to say that an assistant master runs any special risk of being assaulted or murdered, much less any special risk of being the victim of a deliberate conspiracy to assault or murder. Any person may incur the ill-will of others, and if these others happen to include persons of violent or revengeful temper may be assaulted and injured in consequence. But this is a risk which everyone must run, and does not arise out of any particular kind of employment. If Kelly's injuries arose out of his employment within the meaning of the Act, it would seem to follow that any shop superintendent, any overseer, or foreman, and indeed any person placed in authority over others, who incurs the ill-will of and is in consequence assaulted or injured by some subordinate, would be entitled to compensation. It is true that in the present case certain special facts have been found, and that on the strength of these facts the arbitrator has decided that Kelly's injuries did arise out of his employment. But there is nothing to show that the arbitrator directed himself properly as to the meaning of the Act, and therefore nothing to prevent your Lordships from saying that the special facts did not justify the decision. Your Lordships will not be overruling the arbitrator on the facts, but merely deciding that the facts found by him do not as a matter of law bring the case within the Act, properly construed.

In my opinion the appeal should be allowed.

LORD READING—The deceased John Kelly was an assistant schoolmaster employed by the appellants in an industrial school. He was savagely struck by boys attending the school, who had deliberately planned and concerted an attack upon him because of restrictions he had imposed upon them in the discharge of the duties attaching to his employment. The injuries inflicted resulted in his death. The boys were tried for murder and were convicted of manslaughter.

The respondent in this appeal, a dependant within the meaning of the Workmen's Compensation Act 1906, claimed compensation under this statute for the injury caused to Kelly. For the appellants it was contended (1) that the injury was not an "injury by accident," and (2) that the injury did not arise out of and in the course of his employment.

The learned County Court Judge decided against the appellants on both points and made an award in favour of the respondent which was affirmed by the Court of Appeal. The appellants have relied upon the same two points in argument before your Lordships.

The first contention is, that as the injury to the deceased schoolmaster was inflicted by design, it was not an "injury by accident" within the meaning of the statute. The answer to the question thus raised depends upon the meaning attributable to the language of section 1, sub-section 1, of the Workmen's Compensation Act 1906, namely, "an injury by accident arising out of and in the course of the employment." There has been much judicial discussion and some diversity of opinion as to the correct interpretation of these words. Having regard, however, to the close examination by your Lordships of the arguments and of the various authorities, I shall not consider them again in detail, more particularly as I agree with the interpretation placed by the Lord Chancellor upon the particular words under discussion, and also with the conclusions he has drawn from a review of the cases. Lord Halsbury said in *Brintons Limited* v. *Turvey*, 1905 A.C. 230, 42 S.L.R. 862, when dealing with these words in the Workmen's Compensation Act 1897, that the language of the statute must be interpreted in its ordinary and popular meaning. It is not in controversy that the intention of the Legislature as gathered from the statute of 1897 and the later statute of 1906 was to impose upon the employer a much heavier obligation than had hitherto existed to compensate the workman for injury suffered by him in his employment; the only question here in dispute is whether that obligation extends to injuries inflicted by the design of another. Construing the words in their ordinary and popular sense, I think they mean an injury caused to the workman by some sudden and unexpected occurrence, whether the injury was inflicted by design or otherwise, as distinguished from an injury caused to him by some gradual process. For example, if a workman became blind in consequence of an explosion at the factory, that would constitute an injury by accident; but if in consequence of the nature of his employment his sight was gradually impaired and eventually he became blind, that would be an injury but not an injury by accident. If your Lord-

ships were to hold that because a workman was injured by the design of another he was excluded from the benefits of the statute, strange results would follow. The gamekeeper who is set upon by poachers, the warder who is attacked by prisoners, the ticket-collector at a railway station who is assaulted by a passenger, the night watchman at a bank who is struck by a thief, are instances of workmen who would be excluded from the right to compensation if this appeal were allowed, notwithstanding that they were injured whilst performing the duties of their employment. It is difficult to see why the Legislature should have drawn this sharp distinction and have provided that while the employer is bound to compensate even the workman whose injury is attributable to his own serious and wilful misconduct (if it results in death or serious or permanent disablement), he is to escape the payment of compensation to the workman who in the performance of his duties is injured by the design of another. If a person slips on a piece of orange peel and breaks his leg it will be said, in ordinary and popular language, that he has met with an accident, notwithstanding that some person out of mischief or intention to injure him has placed the orange peel in his path. It is an accident to him notwithstanding that it was caused by the design of another. The current of authorities in the Court of Appeal in England and also in Ireland supports this view. The decision to the contrary in *Murray* v. *Denholm & Company*, 1911 S.C. 1087, 48 S.L.R. 896, is based, in my opinion, to a large extent upon a misunderstanding of the passage in Lord Macnaghten's judgment in *Fenton* v. *Thorley & Company*, 1903 A.C. 443, 41 S.L.R. 460, subsequently explained by him in *Clover, Clayton, & Company* v. *Hughes*, [1910] A.C. 242, 47 S.L.R. 885. When Lord Macnaghten's words are carefully considered, and especially with the assistance of his observations in the later case, it is apparent that he was referring only to injuries self-inflicted by design, and that he never intended to decide that an injury caused by the design of another could not be within the words of the section.

The appellants laid much stress upon one argument with which I desire to deal in particular. They contended that some meaning must be given to the words "by accident," and it was argued that these words were inserted by way of limitation upon the obligation of the employer, and that if this House were to affirm the judgment of the Court of Appeal in this case, following other decisions of the Courts in England and Ireland, your Lordships would be reading the section as if the words "by accident" were not there. I agree that these are words of limitation, but I think they were inserted by the Legislature for a definite purpose, and will still be effective for that purpose if your Lordships affirm the judgment of the Court of Appeal. If under the first section the words "by accident" were omitted and compensation was made payable to a workman who suffered an "injury" arising out of and in the ordinary course of the employment, he might recover compensation if, for example, his sight became gradually impaired owing to the nature of his employment. But when the Legislature enacted in 1897 that the workman included in that statute should be indemnified for injury arising out of and in the course of his employment, it did not intend to give compensation for all such injuries, and therefore inserted the words "by accident" in order to exclude the right to compensation for injuries not caused by some sudden and untoward event. By the statute of 1906 Parliament widely extended this right of workmen to compensation for injury, and by section 8 provided, for the first time in this class of legislation, that in certain circumstances and within certain limits a workman who had contracted a disease due to the nature of his employment should be entitled to compensation, and that disablement or suspension from his employment owing to such disease should be treated as the happening of an accident. But this section is made applicable only to certain diseases, and if since the passing of this statute a workman suffers injury from a disease so contracted to which this section does not apply, or if he cannot satisfy the conditions and bring himself within the ambit of the section he is still not entitled to compensation notwithstanding that he has suffered an injury arising out of and in the course of his employment.

Therefore, in my judgment, notwithstanding that the words may be held to mean injury by a sudden or unexpected occurrence whether caused by design or otherwise, they will still find their place and effect their purpose as words of limitation upon the obligations of the employer.

Upon the second point the only question for your Lordships is whether, as a matter of law, there was evidence to support the finding of fact of the learned County Court Judge. I think for the reasons already given by some of your Lordships, with whose conclusions I agree, that the evidence was sufficient.

I am of opinion that this appeal should be dismissed.

Their Lordships dismissed the appeal.

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