they provided work, which was not a contract of service, but something more like the giving and receiving of charity. And it was pointed out that under the Act no public money raised by assessment can be expended on the providing of work, but only voluntary contributions raised for the purpose. But an examination of the statute has satisfied me that, although the wording of it is unusual, the provisions really do result in contracts of service between the committee and the unemployed. It is true that in a certain sense the relief given (for it is relief) is charitable. But the very purpose of the scheme of distress committees is to take off the appearance of charity by substituting the providing of work to be paid for, exactly as work under an ordinary contract is paid for. The stated case before us shows how readily the claim adapts itself to the forms of the Workmen's Compensation Act, and in my opinion the relationship set up by the Statute of 1905 is really a contract of service falling within that Act, and nothing more or less.

I agree that there is no foundation for the plea dealt with in the second question of law. The fact that the workman received poor relief from the poor law authorities cannot, as I think, operate to give the Distress Committee a right of retaining what (by the assumption) was compensation due to him in lieu of wages.

LORD M'LAREN was absent.

The Court answered the first question in the affirmative, and the second question in the negative.

Counsel for Appellant—Anderson, K.C.—J. A. Christie. Agents—Weir & Macgregor, S.S.C.

Counsel for Respondents—Hunter, K.C. Macmillan. Agents—R. H. Miller & Company, S.S.C.

Saturday, January 23.

FIRST DIVISION.

[Sheriff Court at Dunfermline.

COE *v.* THE FIFE COAL COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *sec.* 1, *sub-sec.* (1)—*Injury by Accident—Accident—Cardiac Breakdown Due to Overwork.*

A miner while engaged in letting full hutches down a steep gradient by hand felt a sudden pain in his chest and sat down saying he thought he had jerked himself. A few days afterwards he became totally incapacitated. In an application under the Act the arbiter found in fact that the cause of the incapacity was cardiac breakdown due to the fact that the work in which he had for some days been engaged was too heavy for him; that he was not injured by any sudden jerk, but that the repeated excessive exertion strained his heart until finally it was overstrained.

Held that the injury was not an accident within the meaning of the Act.

The Workmen's Compensation Act 1906 (6 Edw. VII, c. 58), sec. 1, sub-sec. (1), enacts —"If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman the employer shall . . . be liable to pay compensation. . . ."

James Coe, miner, Kelty, claimed compensation under the Workmen's Compensation Act 1906 from the Fife Coal Company, Limited, Leven, in respect of injuries sustained by him while at work in their employment.

The Sheriff-Substitute (HAY SHENNAN) having refused compensation, a case for appeal was stated.

The facts found proved as stated in the case were as follows—"(1) The appellant was on Friday, 1st May 1908, along with other two men, Robert Richardson and George Sneddon, employed in respondents' said No. 1 pit, Blairadam, in driving a heading off the main level up a gradient of 1 in 3½. The heading had been driven about 60 feet up. Rails had been laid but no wheel had been put up, and the men had to let the full hutches down the steep gradient by hand. At the upper portion of the heading the sleepers of the rails were 4 feet apart and at the lower end 2 feet apart. (2) In letting down a full hutch the men put snibbles in the wheels. The man George Sneddon kept at the side of the hutch to hold it against the rails, while the appellant and the man Robert Richardson held on at the end. This was the method by which the hutches were let down. This work on so steep a gradient involved great strain, as the men went from one sleeper down to another while holding the hutch back. (3) The appellant and the said Robert Richardson and George Sneddon had worked in this way for some days. They usually let down twenty-one hutches in a shift. The appellant had repeatedly complained to the oversman about the want of a wheel for letting the hutches down, and on said 1st May 1908 he at first refused on this ground to go to work, but he did go on the manager's promise that the matter would be attended to. (4) On 1st May, as the men were letting down the ninth or tenth hutch, the pursuer felt a sudden pain in his chest when the hutch was about 8 feet from the bottom of the heading. He let go when he felt the pain and sat down saying that he thought he had jerked himself. He worked to the end of that shift, but was not able to do very much. Only fifteen hutches were let down that day instead of twenty-one. (5) The following day, Saturday, was an idle day at the pit. The appellant went out on Monday, 4th May, but his place was not in condition for working. He was unfit to work on Tuesday, but he worked on the Wednesday, Thursday, and Friday, and on the following Monday till nine o'clock. He was thereafter totally incapacitated until 10th August

1908, but he has now completely recovered. (6) The cause of appellant's incapacity for work was cardiac breakdown, due to the fact that the work in which he had for some days been engaged was too heavy for him. He was not injured by any sudden jerk, but the repeated excessive exertion strained his heart unduly until finally it was overstrained, and this caused the pain which made him let the hutch go. (7) Appellant's average wages prior to his injury were over £2 per week."

The Sheriff-Substitute further stated—"On the above facts I (having the assistance of the medical referee as assessor) found that the appellant's incapacity was not caused by accident within the meaning of the Workmen's Compensation Act 1906, and that the appellant was therefore not entitled to recover compensation from the respondents."

The *question of law* was—"Is the said injury to the appellant an accident within the meaning of the Workmen's Compensation Act 1906?"

Argued for appellant—The injury was an accident within the meaning of the Act—*Stewart* v. *Wilsons and Clyde Coal Co., Limited*, November 14, 1902, 5 F. 120, 40 S.L.R. 80; *Fenton* v. *Thorley & Co., Limited*, [1903] A.C. 443; *M'Innes* v. *Dunsmuir and Jackson*, June 23, 1908, 1908 S.C. 1021, 41 S.L.R. 804; *Ismay, Imrie, & Co.* v. *Williamson*, [1908] A.C. 437. In the words of Lord M'Laren in *M'Innes* (*supra*), this was a "physiological injury resulting in disablement," and was not distinguishable from that held to be an accident in *Stewart* (*supra*). *Esto* that the *causa proxima* was not an accident, the *causa causans* (the cause to be looked to) was certainly so. The injury which caused the disablement was a sudden pain in the chest, and if it was sudden that was enough. The accidental character of an injury would not be displaced by the subsequent illness which might have been the immediate cause of death—*per* Lord Macnaghten in *Brintons, Limited* v. *Turvey*, [1905] A.C. 230, at 234. Reference was also made to *Thomson* v. *Ashington Coal Co., Limited* (1901), 84 L.T. 412.

Argued for respondents—The injury was not an accident, for an accident was something unexpected or sudden occurring at a definite point of time. The injury in question was the result of a gradual process, and was not due to any sudden jerk (*vide* finding 6, *supra*). It was not possible to point to any definite date or time of occurrence, and in this respect it resembled (1) miner's "beat-hand," which was held to be not an accident in *Marshall* v. *East Hollywell Coal Co. Limited* (1905), 21 T.L.R. 494; and (2) "lead poisoning," which was held not to be an accident in *Steel* v. *Cammell, Laird & Co., Limited*, [1905] 2 K.B. 232. Section 2 of the Act (*time for taking proceedings*) implied that the accident happened at an ascertainable point of time. In the cases of *Fenton* (*supra*) and *Turvey* (*supra*) the exact time of the rupture and the heat stroke could be definitely pointed to. These cases therefore were distinguishable. The appellant's incapacity was the natural result of overwork throughout a continuous period, and that was not an accident in the sense of the Act.

At advising—

LORD PRESIDENT—This is a stated case under the Workmen's Compensation Act, and the question put to us is whether an injury to a workman was due to an accident within the meaning of the Workmen's Compensation Act. Now that seems to me to be primarily a question of fact, and therefore, as usual, we must see, before we could interfere with the judgment of the Sheriff, whether he has in some way drawn conclusions which cannot properly be drawn, or which are vitiated by wrong knowledge of the law from the particular facts which he found proved. The facts found proved in the case by the learned Sheriff-Substitute are these. The appellant was working as a miner with two other miners in driving a heading off the main level of the mine, which heading had an up gradient of 1 in 3½. They had been at that work for several days. In the initiation of such an operation it seems from the facts brought before us not to be possible, at least in the early stages, to put up a wheel round which a chain can go and draw the hutches up and down the incline, and accordingly in these early stages of driving the heading all full hutches which had to come down from the top had to be kept back by hand. These three men, of whom the appellant was one, were engaged in that work. This is very heavy work, and the appellant had complained about the work, but still went on with it. Well, then, the case goes on to say that on a certain day, as the men were letting down the ninth or tenth hutch, the pursuer felt a sudden pain in his chest. He sat down, and said that he thought he had jerked himself. He worked till the end of the shift, but was unable to do very much. There were three days during which for various causes there was no work. Then he was one day off. Then he worked for three or four more days and part of another, but after that he became incapacitated for work from a day in the early part of May till the 10th of August, when he completely recovered. Now comes the crucial finding. "(6) The cause of appellant's incapacity for work was cardiac breakdown due to the fact that the work in which he had for some days been engaged was too heavy for him. He was not injured by any sudden jerk, but the repeated excessive exertion strained his heart unduly until finally it was overstrained, and this caused the pain which made him let the hutch go." The Sheriff-Substitute then proceeds—"On the above facts I (having the assistance of the medical referee as assessor) found that the appellant's incapacity was not caused by accident within the meaning of the Workmen's Compensation Act 1906, and that the appellant was therefore not entitled to recover compensation from the respondents."

I confess frankly that I have found the case to be one of great delicacy and difficulty, because it is one of those cases with

which one is not unfamiliar in the law, where one seems almost driven by the course of decisions each of which gradually goes a little further than the one which preceded it, until at last you reach a point which, when the first decision was given, was probably not contemplated. I need not go through the cases to your Lordships. It is quite sufficient to say that what I may call the first of them was the case of *Stewart* v. *Wilsons and Clyde Coal Company, Limited* (1902, 5 F. 120), in this Division, where a man who strained the muscles of his back by a sudden effort in replacing a derailed hutch was held to have suffered an accident in the course of his employment. That case was in terms approved in the case of *Fenton* v. *Thorley* ([1903], A.C. p. 443). So far as discussion is concerned, probably there is no more to be said than was said in the case of *Fenton*, and was said also in the two subsequent cases in the House of Lords. In particular, *Fenton* was very much canvassed in the case of *Brintons Limited* v. *Turvey* ([1905], A.C. 230), where Lord Robertson dissented from their Lordships.

Now, it seems to me that the end of it all really comes to be a question of fact. Where so many have failed, I certainly am not going to try to define what "accident" is, but I can say without fear of being wrong that, negatively, "accident" connotes something different from disease. But where what has gone wrong with a man has had its origin in something which happened during his work, it becomes, I think, a position of great difficulty to say in certain cases whether there has been accident or whether there has not. Of course cases at both ends of the line are very easy. A broken leg or scarlet fever, for instance, would be very easy matters to judge, one the one way, and the other the other. But wherever you get to cases just about where the line may be, it becomes a matter of great difficulty. Accordingly, I have come to the conclusion, not without hesitation, but still I have come to the conclusion, that inasmuch as here the learned Sheriff-Substitute had the advantage of the medical assessor, and had his views upon what here was the matter, it is not for us to interfere with his judgment. It may be very truly said that there is not much difference between straining the muscles of a man's back and straining the heart, which, after all, is just a big muscle, but, on the other hand, the view which the doctor seems to have taken of the case was that it really was not the effect of the occurrence at all, but, if I may use the expression, that the man was simply over-tired by over-exertion. Now, I can scarcely think that every man who goes to work and who is over-tired and is in consequence what you may call off-colour, that every man who is by that means incapacitated from doing his work altogether has in any popular sense—and we have been told by the House of Lords that the words in this statute are to be used in the popular sense—met with an accident.

Accordingly, upon the best consideration I can give the matter, and, without attempting to make a definition of the term accident, I think that in this case the line has been, or has not been, crossed, and that the only thing that we can do is to adhere to the judgment of the Sheriff-Substitute.

LORD KINNEAR—I have come to the same conclusion, although certainly not without great difficulty. But I think the question is primarily a question of fact. The Sheriff-Substitute as arbiter, having the advantage of medical advice, has found in fact that the cause of this man's incapacity was not an accident. We cannot interfere with the decision unless we are satisfied that he has proceeded upon a construction of the statute which is erroneous in law, and has put some meaning upon the word "accident" which is not the meaning truly intended to be put upon it by the Act. Now, upon consideration of all the previous authorities, I am unable to say that he has made that error. I agree with what has been said, that it is not very easy or safe to attempt a definition of the word "accident" as a word of ordinary language, to be understood according to its popular meaning, because popular usage is not exact. But still the word, as it is used in the statute, has a meaning; and we must try to ascertain what that meaning is if we are to apply the statute at all. I do not find the same difficulty which I should have found if I had proposed to define the word for myself, in accepting the definition which has been given in the House of Lords by Lord Macnaghten, and reaffirmed in several cases by a majority of the noble and learned Lords in that House. Lord Macnaghten said in the case of *Fenton* that by "accident" the statute means some "unlooked-for or an untoward event which is not expected or designed," and the other learned Lords who took part in that judgment also gave definitions to the same effect. Lord Shand said—"I think it denotes or includes any unexpected personal injury resulting to the workman in the course of his employment from any unlooked-for mishap or occurrence"; and Lord Lindley said—"Any unintended and unexpected occurence which produces hurt or loss." It seems to me that all these interpretations of the word point to some particular event or occurrence which may happen at an ascertainable time, and which is to be distinguished from the necessary and ordinary effect upon a man's constitution of the work in which he is engaged day by day. So defined, the word "accident" seems to me to exclude the anticipated and necessary consequence of continuous labour. I do not suppose that any question could be raised in this case as to whether the incapacity of which the man complains arose out of or in the course of his employment. It seems to me to be clear enough that it did, but then whether it was a personal injury arising from accident in the sense of the statute is a different question; and if we are to take the opinions affirmed by the

House of Lords as binding upon us, as I think we must, I come to the conclusion that it was not such an accident.

I quite agree that there might be considerable difficulty in arranging all the cases under any definite rule if we were to take the series of statements of facts by themselves, and proceed to consider them as questions of fact which we were to interpret. But I do not think the same difficulty arises if we take, as I think we are bound to do, the interpretations which the House of Lords has put upon them, because after all these decisions are of value for us in so far only as the facts have been interpreted by the House of Lords, and it is their interpretation which is the basis of the judgment. As regards the case of *Fenton*, I think the meaning of the judgment is made clear from the words I have already cited from the opinions of three noble and learned Lords. But then I think the same view is taken in the last case of all, the case which in itself would certainly, in my opinion, have created difficulty were I not instructed by the judgment of the House of Lords—I mean the case of *Ismay, Imrie & Company* v. *Williamson* [1908] A.C. 437. That was a case where a stoker died from the effect of a heat stroke received while at work in a stoke-hole. The Lord Chancellor, after saying that he takes the case of *Fenton* v. *Thorley*, where the meaning of the word "accident" was very closely scrutinised, as a conclusive authority which he would not depart from if he could, goes on to say—"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. It was an unlooked-for mishap in the course of his employment. In common language, it was a case of accidental death." There was a differenee of opinion, and a very weighty dissent from the opinions of the majority in the House of Lords, but the ground of judgment is entirely in accordance with the opinions in *Fenton* v. *Thorley*, and I think must govern our decision in this case. If, then, we inquire whether the language I have quoted is applicable to the state of facts set forth in this case, the answer must in my opinion be in the negative.

I come to the conclusion, therefore, that the Sheriff's decision was not determined by an erroneous construction of the Act of Parliament when he found this man's incapacity was not due to unlooked-for mishap or accident, but was the ordinary and necessary consequence of continuous work lasting over a considerable time. The exact period we do not know, but we know that he had been for some days at work during which time he had made complaints of the heaviness of the work, and that it was the repeated exertion which strained his heart until it was finally overstrained. I therefore agree with your Lordships.

LORD PEARSON—I agree with your Lordships in thinking this a very narrow case. The important thing is to ascertain precisely the cause or causes of the man's incapacity for work in order to ascertain if the incapacity was caused by accident. The injury is described by the Sheriff as a cardiac breakdown, due to the fact that the work was too heavy for him, and the Sheriff finds in fact that the repeated excessive exertion strained the heart unduly, until finally it was overstrained. I do not think that that is an accident within the ordinary meaning of the term. The word is commonly used to denote what has been variously described as a definite event or occurence or mishap, as distinguished from the combined effect of a succession of similar causes operating over a substantial period of time. I think it must be something of which you can say that it happened on a particular date; and this ordinary use of the word is in accordance with the statutory meaning, else it would in many cases be impossible to ascertain whether notice of it had been timeously given to the employer.

LORD M'LAREN was absent.

The Court answered the question of law in the negative.

Counsel for Appellant—Watt, K.C.—Wilton. Agent—D. R. Tullo, S.S.C.

Counsel for Respondents—Hunter, K.C.—Strain. Agents—W. & J. Burness, W.S.

Saturday, January 30.

FIRST DIVISION.

[Sheriff Court at Perth.

MIDLAND DISCOUNT COMPANY, LIMITED *v.* MACDONALD.

Money Lender—Loan Transaction—Excessive Interest—"Harsh and Unconscionable"—Relief—Money Lenders Act 1900 (63 *and* 64 *Vict. c.* 51), *sec.* 1.

In return for a loan of £50 for four months a small farmer, voluntarily and without pressure, concealment, or fraud practised upon him, signed a bill for £65. No security for the advance was given to the money lenders.

In an action on the bill, *held* that although the interest was excessive, the bargain was not in the circumstances "harsh and unconscionable" in the sense of the Money Lenders Act 1900, and that accordingly the Court had no power to re-form the contract.

The Money Lenders Act 1900 (63 and 64 Vict. c. 51) enacts—Section 1 (1)—"Where proceedings are taken in any Court by a money lender for the recovery of any money lent after the commencement of this Act, or the enforcement of any agreement or security made or taken after the commencement of this Act, in respect of money lent either before or after the commencement of this