decided, and is an authority very much in point for the Associated Company. The contract there was held assignable, although the word assigns did not occur. The appeal fails, and the order of the Court of Appeal should be affirmed with costs, but the formal order of the Court of Appeal will, I think, be improved if amended as suggested by Lord Macnaghten.

Judgment appealed from affirmed.

Counsel for the Appellant—Pickford, K.C.—George Wallace. Agents—Sismey & Cook for Tolhurst, Lovell, & Clinch, Gravesend.

Counsel for the Respondents—Younger, K.C.—Bremner—H. E. Wright. Agents—Ashurst, Morris, Crisp, & Co.

HOUSE OF LORDS.

Friday, August 7.

(Before Lords Macnaghten, Shand, Robertson, Davey, and Lindley.)

FENTON *v.* THORLEY & COMPANY.

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

Master and Servant - Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1 (1)—"*Accident*"—*Injury by Accident—Rupture Caused by Strain.*

The expression "accident" in the Workmen's Compensation Act 1897 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.

A workman ruptured himself while attempting in the course of his employment to turn the wheel of a machine which had stuck.

Held that his injury was an "injury by accident" within the meaning of the Workmen's Compensation Act 1897, and that he was entitled to compensation.

Stewart v. *Wilsons and Clyde Coal Company, Limited*, November 14, 1902, 5 F. 120, 40 S.L.R. 80, *approved.*

In an arbitration under the Workmen's Compensation Act 1897, brought in the County Court of Surrey by Fenton, a workman, against his employers Thorley & Company, the County Court Judge held that Fenton, who had ruptured himself while attempting to turn a wheel in the course of his employment, was not entitled to compensation, no accident having occurred within the meaning of the Act.

On appeal the Court of Appeal (COLLINS, M.R., MATTHEW, and COZENS HARDY, L.JJ.) affirmed this decision.

Fenton appealed.

The facts of the case are fully stated in the opinion of Lord Macnaghten.

At delivering judgment—

LORD MACNAGHTEN—Fenton, the appellant, was a workman in the employment of the respondents, who manufacture for sale an article called "Thorley's Food for Cattle. He was employed to look after one of the machines used in preparing the food. It seems to have been a sort of combination of kettle and press. The actual operation performed by this machine takes about six or eight minutes. At the end of that time the workman in charge moves a lever, and then turns a wheel for the purpose of raising the lid and removing the contents, which come out, or ought to come out, dried and pressed into separate layers of cakes. On the 3rd December 1901 Fenton was at work at his machine. He had got through the operation on that day a good many times without hitch or difficulty, but about 9 p.m. or a little later, when the time came for opening the vessel the wheel would not turn. He then called a fellow-workman to his assistance, and the two men together set to work to move the wheel. Suddenly Fenton felt something which he describes as a "tear" in his "inside," and it was found that he was ruptured. Fenton was a man of ordinary health and strength. There was no evidence of any slip or wrench or sudden jerk. It may be taken that the injury occurred while the man was engaged in his ordinary work, and in doing or trying to do the very thing which he meant to accomplish. There is evidence that the wheel was short of one spoke or handle, which may have made it more difficult to grasp than usual, and it was discovered afterwards that there was a leak in the kettle which let moisture into the vessel below, glueing its contents together and so causing the lid to stick. I mention these circumstances merely for the purpose of putting them aside. It was indeed argued by the learned counsel for the appellant that if the mishap that befel Fenton was not of itself and apart from all other circumstances an accident within the meaning of that word as used in the Act, then these two things—the loss of a spoke in the wheel and the leak in the kettle—introduced an element of accident—a fortuitous element it was called—which would satisfy the terms of the enactment, however narrowly it may be construed. In my opinion they do not affect the question in the least. The Court of Appeal held that the injury which Fenton sustained was not "injury by accident" within the meaning of the Act. In so holding they followed an earlier decision of the Court in the case of *Hensey* v. *White* (1900), 1 Q.B. 481, which in its circumstances is not distinguishable from the present case. In *Hensey* v. *White* a passage was cited from the opinion of Lord Halsbury, L.C., in *Hamilton, Fraser, & Co.* v. *Pandorff & Co.*, 12 App. Cas. 518, in which his Lordship said—"I think the idea of something fortuitous and unexpected is involved in both words 'peril' or 'accident.'" Founding themselves upon that expression, the learned Judges of the Court of Appeal held in *Hensey* v. *White*, as they have held here, that there was no accident,

because (to quote the leading judgment) there was "an entire lack of the fortuitous element." What the man "was doing," it was said, "he was doing deliberately, and in the ordinary course of his work, and that which happened was in no sense a fortuitous event." To the expression as used by Lord Halsbury in the passage in which it occurs no possible objection can be taken; but it is, I think, to be regretted that the word fortuitous should have been applied to the term injury by accident in the Workmen's Compensation Act. If it means exactly the same thing as accidental the use of the word is superfluous. If it introduces the element of haphazard (if I may use the expression), an element which is not necessarily involved in the word "accidental," its use, I venture to think, is misleading and not warranted by anything in the Act. And now I must ask your Lordships' attention to the Act itself; but before doing so there are two observations which I should like to make. If a man in lifting a weight or trying to move something not easily moved were to strain a muscle, or rick his back, or rupture himself, the mishap, in ordinary parlance, would be described as an accident. Anybody would say that the man had met with an accident in lifting a weight, or trying to move something too heavy for him. One other remark I should like to make. It does seem to me extraordinary that anybody should suppose that when the advantage of insurance against accident at their employers' expense was being conferred on workmen Parliament could have intended to exclude from the benefit of the Act some injuries ordinarily described as accidents which beyond all others merit favourable consideration in the interest of workmen and employers alike. A man injures himself by doing some stupid thing, and it is called an accident, and he gets the benefit of the insurance. It may even be his own fault, and yet compensation is not to be disallowed unless the injury is attributable to "serious and wilful misconduct" on his part. A man injures himself suddenly and unexpectedly by throwing all his might and all his strength and all his energy into his work by doing his very best and utmost for his employer, not sparing himself or taking thought of what may come upon him, and then he is to be told that his case is outside the Act because he exerted himself deliberately, and there was an entire lack of the fortuitous element. I cannot think that right. I do think that if such were held to be the true construction of the Act the result would not be for the good of the men nor for the good of the employers either in the long run. Certainly it would not conduce to honesty or thoroughness in work. It would lead men to shirk and hang back and try to shift a burden which might possibly prove too heavy for them on to the shoulders of their comrades. Now I turn to the Act. The title of the Act is—"An Act to amend the law with respect to compensation to workmen for accidental injuries suffered in the course of their employment." It has been held that you cannot resort to the title of an Act for the purpose of construing its provisions. Still, as was said by a very sound and careful Judge, "the title of an Act of Parliament is no part of the law, but it may tend to show the object of the legislation." Those were the words of Wightman, J., in *Johnson* v. *Upham* (2 E. & E. 250); and Chitty, J., observed in *East and West India Docks* v. *Shaw, Savill, and Albion Company* (39 Ch. Div. 524) that the title of an Act may be referred to for the purpose of ascertaining generally the scope of the Act. Surely, if such a reference is ever permitted it must be permissible in a case like this, where Parliament is making a new departure in the interest of labour, and legislating for working men presumably in language that they can understand. The first section of the Act, sub-sec. (1), declares that "if in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman" his employers shall be liable to pay compensation. Now, the expression "injury by accident" seems to me to be a compound expression. 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. Then comes the question, Do the words "arising out of and in the course of the employment" qualify the word "accident" or the word "injury" or the compound expression "injury by accident"? I rather think the latter view is the correct one. If it were a question whether the qualifying words apply to "injury" or to "accident," there would, I think, be some difficulty in arriving at a conclusion. I find in section 4 the expression "accident arising out of and in the course of their employment." In section 9 I find the words "personal injury arising out of and in the course of his employment," while in section 1, sub-section 2 (6), the qualifying words seem to be applied to the compound expression "injury to a workman by accident." The truth is that in the Act, which does not seem to have had the benefit of careful revision, "accident" and "injury"—that is, injury by accident—appear to be used as convertible terms; for instance, in section 2 "notice of the accident" has to be given, and that notice is referred to immediately afterwards as "notice in respect of an injury under the Act." 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. It would serve no useful purpose to review the English cases on the subject. The decisions before *Hensey* v. *White* are curiously conflicting. It would seem almost as if the Court, in some cases at least, simply confirmed the finding of the County Court Judge as a finding of fact, however opposed the finding might be to a previous decision of the Court on facts precisely similar,

With the decision in *Hensey* v. *White*, and the decisions in which that case has been followed, including *Roper* v. *Greenwood* (83 L. T. Rep. 471), speaking with all deference, I am unable to agree. There is, however, a recent decision of the Court of Session in Scotland to which I should like to call your Lordships' attention, and in which I agree entirely. It is the case of *Stewart* v. *Wilsons and Clyde Coal Company, Limited* (November 14, 1902, 5 F. 120, 40 S.L.R. 80). A miner strained his back in replacing a derailed coal hutch. The question arose, Was that an accident? All the learned Judges held that it was. True, two of the learned Judges expressed an opinion that it was "fortuitous," but they could not have used that expression in the sense in which it was used in *Hensey* v. *White*. What the miner did in replacing the hutch he certainly did deliberately and in the ordinary course of his work. There was nothing haphazard about it. Lord M'Laren observed that it was impossible to limit the scope of the statute. He considered that "if a workman in the reasonable performance of his duties sustains a physiological injury as the result of the work he is engaged in, . . . this is accidental injury in the sense of the statute." Lord Kinnear observed that the injury was "not intentional," and that "it was unforeseen." "It arose," he said, "from some causes which are not definitely ascertained, except that the appellant was lifting hutches which were too heavy for him." "If," he added, "such an occurrence as this cannot be described in ordinary language as an accident, I do not know how otherwise to describe it." The learned counsel for the respondents in his able address referred to several cases on policies of insurance intended to cover injuries described either as arising from accidental, violent, and external causes, or in somewhat similar terms. I do not think that these cases throw much light upon the present question. They turn on the meaning and effect of stipulations for the most part carefully framed in the interest of the insurers. But on the whole they do not, I think, make against the construction which I ask your Lordships to put on the word "accident" in the Workmen's Compensation Act. I will not trouble your Lordships by going through the cases which Mr Powell cited. I will only refer to one—a case of considerable authority, for it was a case in the Supreme Court of the United States. It is *United States Mutual Accident Association* v. *Barry*, reported in 131 U.S. Sup. Ct. Rep. 100. A jury had found in favour of the assured, who had injured himself fatally in jumping off a platform some 4 feet or 5 feet high. There was a motion for a new trial on the ground of misdirection. The Court refused to disturb the verdict. In the course of the judgment two cases were referred to with approval as supporting the conclusion at which the Court arrived. One was an English, the other an American case. I give them both as stated in the judgment. In *Martin* v. *Travellers Insurance Company* (1 F. & F. 505), the "policy was against any bodily injury resulting from any accident or violence, 'provided the injury should be occasioned by any external or material cause operating on the person of the insured.' In the course of his business he lifted a heavy burden and injured his spine. It was objected that he did not sustain bodily injury by reason of an accident. The plaintiff recovered. In *North American Insurance Company* v. *Burroughs* (69 Pen. Rep. 43) the policy was against death in consequence of accident, and was to be operative only in case the death was caused solely by accidental injury. It was held that an accidental strain resulting in death was an accidental injury within the meaning of the policy, and that it included death from any unexpected event happening by chance and not occurring according to the usual course of things." I have no doubt that in the present case the County Court Judge ought to have found in favour of the appellant, if he had not been compelled to decide the other way by recent decisions in the Court of Appeal. I move your Lordships that the decision of the Court of Appeal and of the County Court Judge be reversed, with costs in both Courts, and that the action be remitted to the County Court with a direction to the Judge to ascertain the amount of compensation to which the appellant is entitled. The costs here will follow the rule laid down for pauper appeals.

LORD SHAND (whose judgment was read by Lord Macnaghten)—I agree in thinking that the appeal should be sustained, and that the judgments of the Court of Appeal and of the County Court Judge should be reversed, and I concur in the judgment of Lord Macnaghten, which I have had an opportunity of considering carefully. If the word "accident" were interpreted in the Workmen's Compensation Act 1897, or were there defined so as to bear a special or narrow sense only, it might be necessary to consider and examine the American authorities which were cited in the argument. But I agree with 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. I refrain from referring in detail to the language used in the different parts of the statute, because in so doing I should only be repeating what has been already said. I shall only add that, concurring as I fully do in holding that the word "accident" in the statute is to be taken in its popular and ordinary sense, I think that 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.

LORD DAVEY concurred in the judgment of Lord Macnaghten.

LORD ROBERTSON—It is not disputed that this man, being a person of ordinary strength, suffered personal injury while

working at his employers' business because he applied such force to his work as to rupture himself. Nor is it suggested that he hurt himself intentionally. The plain fact is that he miscalculated, or by inadvertence did not compare the relative resisting force of the wheel and his body. In this state of facts I am of opinion that this personal injury arose by accident out of and in the course of the man's employment in the sense of section 1 of the Workmen's Compensation Act 1897, and I think that there was an accident in the sense of the other sections in which the word "accident" is used, whether preceded by "an," "any," or "the." Much poring over the word "accident" by learned counsel has evolved some subtle reasoning about these sections. I confess that the arguments seem to me to be entirely over the heads of Parliament, of employers, and of workmen. No-one out of a law court would ever hesitate to say that this man met with an accident; and, when all is said, I think this use of the word perfectly right. The word accident is not made inappropriate by the fact that the man hurt himself. This use is, indeed, directly sanctioned by this Act itself, for section 1 (2) (*c*) plainly implies that an accident giving right to compensation may be attributable to the fault of the injured man himself. In the present instance the man by an act of over-exertion broke the wall of his abdomen. Suppose the wheel had yielded and been broken by exactly the same act, surely the breakage would be rightly described as accidental. Yet the argument against the application of the Act is in this case exactly the same, that there is nothing accidental in the matter as the man did what he intended to do. The fallacy of the argument lies in leaving out of account the miscalculation of forces, or inadvertence about them, which is the element of mischance, mishap, or misadventure. In this view I do not rely on the historical circumstance that the sticking of the wheel was caused by an accidental leak. I think myself that the leak is too remote to impart its own accidental character to the injury which ultimately resulted to this man. I am for allowing the appeal.

LORD LINDLEY—The Workmen's Compensation Act 1897 contains no definition of the word accident, but the interpretation and legal effect of the Act when applied to ascertain facts are clearly questions of law as distinguished from questions of fact. I will assume for the present that it is for the plaintiff to prove personal injury caused by an accident. But when personal injury and its cause or causes have been ascertained, the question whether such cause or causes amount to an accident within the meaning of the Act is a question of law on which the decision of the County Court Judge is not final, and is not a question of fact on which his decision is not open to appeal. Upon this point I will only remind your Lordships of the observations of Lord Brampton in *Hoddinott* v. *Newton, Chambers, & Company, Limited* (1901) A.C. 49, which were concurred in by the other noble Lords who heard that case, although they differed in the result. The word accident is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause, and if the cause is not known the loss or hurt itself would certainly be called an accident. The word accident is also often used to denote both the cause and the effect, no attempt being made to discriminate between them. The great majority of what are called accidents are occasioned by carelessness, but for legal purposes it is often important to distinguish careless from other unintended and any unexpected events. In this Act of Parliament the word is used in a very loose way. The title speaks of "accidental injuries," sec. 1 (1) uses the expression "personal injury by accident." Personal negligence and even a wilful act on the part of an employer or anyone for whom he is responsible is not called an accident, but it can be dealt with as if it were an accident (sec. 1 (2, *b*). Serious and wilful misconduct on the part of a workman precludes him from obtaining the benefit of the Act (sec. 1 (2, *c*), but mere carelessness on his part does not. Further, sec. 1 (4) shows that the Act applies to cases where a workman sustains injuries for which but for the Act he would have no remedy. In sec. 2 "accident" and "accident causing the injury" are used indiscriminately in fixing the time within which notice of it has to be given. In the schedule the word "injury" is used, and the word "accident" does not occur. 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 of compensating their workmen for personal injuries for which such employers were not responsible before, and it becomes necessary to determine what injuries are within the Act and what are not. The governing section is sec. 1 (1), which runs thus—"If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman," his employer shall be liable to pay compensation. What is meant by personal injury by accident? Mr Powell in his very able argument contended that there must be—first, a personal injury; secondly, that there must be an accident causing it; thirdly, that such accident must be the proximate cause of injury, and that nothing more remote than the proximate cause can be properly taken into account. I cannot accede to this contention. Assuming that there must be something unintended and unexpected besides the personal injury sustained, or, in other words, assuming that there must be a personal injury and an accident causing it, I cannot agree with Mr Powell that this statute ought to be construed as if it were

a policy of insurance against accidents. In an action on a policy the *causa proxima* is alone considered in ascertaining the cause of loss, but in cases of other contracts and in questions of tort the *causa causans* is by no means disregarded. This was pointed out by Willes, J., in *Grill* v. *General Iron Screw Colliery Company*, L.R., 1 C.P. 600, and is strikingly illustrated by *Siordet* v. *Hall*, 4 Bing. 607, and numerous other cases of a similar kind. *Siordet* v. *Hall* was an action against a steamship owner for injury to cargo caused by water escaping from a pipe which had been burst by a sharp frost. The defence was that the accident was an act of God for which the defendant was not responsible. The judge, however, told the jury that if the water had been unnecessarily placed in the boiler, or, considering the season of the year, improperly left there without heat to prevent the action of the frost upon the pipe, the mischief was not occasioned by the act of God but by gross negligence. The jury found for the plaintiff. A new trial was applied for on the ground of misdirection. The Court held that the loss was attributable to negligence and was not caused by the act of God so as to exonerate the defendant from liability. In other words, attention was paid to the circumstances under which the proximate cause produced the damage complained of. 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 clearly defeated. No doubt the rupture in this case was the result of an effort voluntarily and strenuously made, and it may be that a policy of insurance against accidents might be so worded as not to cover an injury so caused. But if we look further and inquire what called forth this unusual effort, we find it was an unexpected difficulty in moving the wheel of the machine, and that this difficulty arose from an unobserved leakage which caused the material in the machine to choke the mechanism. The machine was accidentally put out of order. It had worked properly until it was stopped by an accident. It is not straining language, but using it in its ordinary sense, to describe the personal injury as caused by an accident. The personal injury was the rupture; the cause of it was the unintended and unexpected resistance of the wheel to the force applied to it. Such a case appears to me to fall within the Act. Every injury must have a cause. The proximate cause may be an internal strain; but if, as in this case, the strain is occasioned by an effort to overcome an obstacle accidentally presented to a workman in the course of his employment, I am not prepared to say that the Act does not apply. I think that it clearly does, and that the interpretation put upon the Act in Scotland in *Stewart* v. *Wilsons and Clyde Coal Company, Limited*, is to be preferred to the narrower construction occasionally adopted in this country. In this case the cause of the injury is known, and it is proved that the cause was an accident. It is not therefore necessary to consider whether the Act applies to cases in which the cause of the injury is not known, or in which the only unforeseen occurrence is the personal injury itself. But if personal injury is caused to a workman, and it arises out of and in the course of an employment to which the Act applies, it appears to me that *prima facie* the Act entitles him to compensation, but that this inference may be displaced by proof that the injury is attributable to his own serious and wilful misconduct or to some other cause which shows that the injury was not accidental. The Scotch case above referred to is a valuable authority on this point. The appeal in this case ought to be allowed, and the case be remitted to the County Court judge to assess compensation, as proposed by my noble and learned friend Lord Macnaghten.

Judgment appealed against reversed.

Counsel for the Claimant and Appellant—Cyril Dodd, K.C.—F. Mellor—E. A. Jelf. Agent—C. F. Appleton.

Counsel for the Respondents—A. Powell, K.C.—W. Shakespeare. Agents—W. Hurd & Son.

PRIVY COUNCIL.

Wednesday, November 4.

(Before Lord Davey, Lord Robertson, and Sir Arthur Wilson.)

GRAND HOTEL COMPANY OF CALEDONIA SPRINGS *v.* WILSON.

(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.)

Trade Name—Descriptive Name—No Exclusive Right to Local Name—Mineral Water Described by Name of Locality of Springs.

The mineral water of A & Co., the owners of springs in the Canadian township of Caledonia, acquired in the market the name of "Caledonia Water."

Thereafter other springs were discovered in the same township, and B, their proprietor, while using a different label and trade-mark from those of A & Co., sold the water as water from "New Springs at Caledonia."

Held that A & Co. had no right to the exclusive use of the word "Caledonia" and that B having sufficiently distinguished the product of his springs from that of A & Co. was entitled to indicate the local source of his mineral water by naming it as he had done.

The Grand Hotel Company of Caledonia Springs, who owned certain mineral springs in the township of Caledonia in the province of Ontario, Canada, brought two actions, afterwards consolidated, for an injunction to restrain the defendants Wilson and others, who had proprietory and