claiming a right, under a statute, to appropriate the property of one of its subjects without giving notice to that subject that it proposes to do so. And the pursuers do not ask the Court to inquire into the true value, nor would the decree asked have any such effect. They only say that if a figure cannot be altered except on one condition, then it must remain unaltered if that condition is not fulfilled.

But if, contrary to the Lord Ordinary's opinion, the clause in question is open to construction, I am unable to see any sufficient reason why a sound construction should, in one view, admittedly except all cases of want of compliance with the provisions of the Act arising from fraud, or where the whole procedure under the Act has been omitted or the right of appeal has been refused, or where there has been *error calculi*, and in another view should admittedly except all cases of want of compliance with the provisions of the Act which have been wilful whether fraudulent or not, and why a sound construction should not also except the failure to give the notice prescribed in section 5, from whatever cause or motive that failure may have arisen.

Taking this view of the statute, I do not find it necessary to deal with the narrower ground which formed Mr Sandeman's alternative argument. But my impression is, contrary to that argument, that the roll is not made up till it is finally authenticated.

The previous cases, with the exception of *Sharp* v. *Latheron Parochial Board*, do not seem to me to touch the present question. Lord Kinnear, as Lord Ordinary in that case, on the same point as is raised in the present case, decided the question on the merits, apart from the precise remedy to be granted, as I propose it should be decided now. The Second Division, as I read the Lord Justice-Clerk's opinion, were resolved to affirm the result arrived at by Lord Kinnear, but were not prepared to commit themselves to approval of the ground on which his judgment was rested. They gave his reasoned judgment the go-by, and appealed to equity, which is a strange foundation for a judgment in a valuation case.

As to section 33, and the case of the *Magistrates of Glasgow* v. *Hall*, 14 R. 319, if I am right that section 30 is open to construction, section 33 and that case can present no difficulty. Otherwise in the cases in which the Dean of Faculty admitted that an *ex facie* valid valuation roll would be challengeable, section 33 and the case of *Hall* would be just as fatal a barrier as they are alleged to be in the present case.

Nor do I think opinions as to the impossibility of reducing the valuation roll, pronounced in cases where there had been no failure to comply with provisions of the statute, which as I think, are made by the statute itself, essential pre-requisites to the existence of a statutory valuation roll, can be conclusive of the present case.

The proof which I think should be allowed would include evidence that no notice in regard to the Grand Theatre was received by the pursuers, as well as evidence that the assessor did not transmit, in the sense of duly dispatch or send off, any such notice. The latter is now explicitly averred on record, as it was not when the case was before the Lord Ordinary. The first point does not arise for decision at the present stage, but my impression, for what it is worth, is that the pursuers can only succeed, in what may well turn out to be an impossible task, if they prove that no notice in regard to the Grand Theatre was duly dispatched to them by the assessor.

The Court, in conformity with the opinions of the majority of the Consulted Judges, recalled the interlocutor reclaimed against, allowed the parties a proof of their averments on record other than those relating to the value of the subjects in question, and remitted to the Lord Ordinary to take the proof.

Counsel for the Pursuers and Reclaimers —Sandeman, K.C.—W. T. Watson. Agents —Menzies, Bruce-Low, & Thomson, W.S.

Counsel for the Defenders and Respondents—Solicitor-General (Morison, K.C.)—Crawford. Agents—Simpson & Marwick, W.S.

HOUSE OF LORDS.

Monday, March 6.

(Before Viscount Haldane, Lord Kinnear, Lord Shaw, Lord Parmoor, and Lord Wrenbury.)

GLASGOW COAL COMPANY, LIMITED *v.* WELSH.

(In the Court of Session, July 20, 1915, 52 S.L.R. 798, and 1915 S.C. 1020.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Accident*"—*Rheumatism Caused by Immersion in Water which Workman was Baling out of a Pit in Obedience to Orders.*

The pump of a coal mine having broken down, a miner, a brusher, who had gone down the pit to resume his regular work, was directed to bale the water which had accumulated. He was immersed to the chest, and was in this position for several hours, thereby contracting sub-acute rheumatism, which incapacitated him.

Held that the personal injury was "by accident."

This case is reported *ante ut supra.*

The appellants, the Glasgow Coal Company, Limited, appealed to the House of Lords.

VISCOUNT HALDANE—I do not think that the question raised by this appeal is really a difficult one. The Sheriff-Substitute has found that the rheumatism from which the respondent suffered "was caused by the extreme and exceptional exposure to cold and damp to which he was subjected" by complying with the directions given to him

on the 28th October 1914 to bale the water out of the pit—a direction which necessitated his entering the water and standing in it up to his chest for eight hours. In order to make out his claim under the Workmen's Compensation Act 1906 a workman must prove that there was "personal injury by accident arising out of and in the course of his employment." The finding of the arbitrator, who was in this case the Sheriff-Substitute, is made conclusive as to whether he has done so, unless there was on the face of the award error in law or unless there was no evidence to support it. In the present appeal it is clear that it must be taken that the arbitrator found conclusively that there was injury due from an event arising out of and in the course of the employment. The one question is, whether, reading the award as a whole, this event could be in point of fact an accident within the meaning of the Act, for if so the arbitrator certainly had before him evidence on which he could find that it had happened.

On the question so remaining I think that the judgment in this House in *Fenton* v. *Thorley & Company, Limited*, 1903 A.C. 443, is conclusive. If the definition of accident within the meaning of the Act is "an unlooked-for mishap or an untoward event which is not expected or designed" as stated by Lord Macnaghten it covers the present case. If a qualification is added, as was proposed by Lord Robertson, to the effect that such mishap must arise from miscalculation of forces or inadvertence to them, I think the definition so qualified will still cover the case, for I interpret the finding of facts as amounting to this, that there was an entry into the cold water and prolonged exposure to it, the effects of which being miscalculated proved unexpectedly injurious. There is no suggestion of serious and wilful misconduct on the part of the workman which might, under section 1 (2) (*c*) of the Act, deprive him of the right to compensation. Indeed it is plain that he went into the water to bale it out of the pit under directions from his employer, and he does not appear to have entertained such apprehensions of danger to himself as to induce him to disobey those directions. Had he died suddenly while so exposed, say, of heart disease, there can be no doubt that this would have given a title to his dependants to claim on the footing of injury from accident. I am unable to see why a claim in respect of a less serious mishap should be excluded by the circumstance that the miscalculated action of entering the water took time to produce its consequences. This miscalculated action of entering the water in the present case must be taken to have constituted a definite event which culminated in rheumatic affection. It was the miscalculation which imported into that event the character of an accident within the meaning of the Act.

For these reasons I have come to the conclusion that the appeal ought to be dismissed with costs, and I move accordingly.

Lord Kinnear—I agree with the noble and learned Viscount that this appeal must be dismissed. It cannot be disputed that on the 28th of October the respondent sustained an injury (to wit, a sub-acute rheumatism) arising out of his employment, and the only question is whether the injury arose by accident in the sense of the statute. I agree with the majority of the Judges in the Court of Session that this question is not to be answered by pointing to the breakdown of a water pipe on the 23rd of October. It may be that the inception of the disease may be logically traceable to the bursting of the pipe through a series of causes and effects following one another in order. But the connection is too remote to avail for fixing the right to compensation. It is trite doctrine that inasmuch as "it were infinite for the law to judge the causes of causes, it contenteth itself with the immediate cause." I of course accept the law laid down in this House in the cases of *Fenton* v. *Thorley*, and *Clover, Clayton, & Company*, [1910] A.C. 242, that the distinction of proximate from remote causes is not to be rigorously pressed in the application of the Workmen's Compensation Act. But the maxim, if it is not to be treated as an inflexible rule, may still be useful as "a guide," to use the language of a distinguished writer, "to the exercise of common sense." And this is quite in accordance with the opinion expressed by noble and learned Lords in the cases I have cited. For what they disapproved of was in effect the substitution of logical subtleties for the natural reading of plain facts. Accordingly in the case of *Fenton*, where a workman was ruptured while trying to turn a wheel which had stuck in consequence of an accidental leak in a part of the machinery, Lord Robertson says—"The plain fact is that he miscalculated or by inadvertence did not compare the relative resisting forces of the wheel and his body. In this state of facts I am of opinion that this personal injury arose by accident in the sense of the statute"; and he adds—"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." In like manner Lord Macnaghten, after explaining the accidents which had impeded the working of the wheel, says—"I mention these circumstances only for the purpose of putting them aside. It was indeed argued by the learned counsel for the appellant that if the mishap that befell Fenton was not in itself and apart from all other circumstances an accident within the meaning of the Act, then these two things—the loss of a spoke in the wheel and a leak in the kettle—introduced an element of accident 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."

I conceive that this decision, both on its negative and its affirmative side, is directly in point. On the other hand, in the case of *Coyle* (*Brown*) v. *Watson*, 1914 S.C. (H.L) 44, 51 S.L.R. 492, it was held that the ante-

cedent wreckage of a mine shaft was not too remote to be taken into account in determining the accidental character of the consequent exposure of a workman to a cold draught whereby he contracted pneumonia. But this is in no way inconsistent with *Fenton's* case, because the facts were different. It was held in the later case that the incidents were directly connected and could not be treated as independent and detached factors. In this particular the present case is, in my judgment, distinguishable from *Coyle* and not distinguishable from *Fenton*.

If the breakage of the pump must therefore be treated as an historical incident and not as a direct cause of injury, we have still to look for the true determining fact on which the case depends. And I think the ninth finding of the Stated Case leaves no room for doubt upon this matter. I observe that the learned Sheriff-Substitute distinguishes with precision between his findings in fact, which are final, and the decision which he bases on the facts so found, and which admittedly involves matter of law. The finding which I take to be conclusive is "that the rheumatism from which the respondent suffered was caused by the extreme and exceptional exposure to cold and damp to which he was subjected on the occasion in question." I agree with my noble and learned friend that the Sheriff-Substitute cannot be said to have misconstrued the statute when he found, further, that "this was an injury by accident arising out of and in the course of his employment." On the particular occasion described the man exposed himself, in performance of his duty to his employer, to an extreme and exceptional degree of cold and damp, the character and effects of which he had miscalculated or through inadvertence had failed to foresee. If the Sheriff-Substitute thought that this was an untoward and unlooked-for mishap which was not expected nor designed, I see no ground in law for disturbing his decision.

The learned counsel for the appellants argued that in order to satisfy the Act there must be some distinct event or occurrence which taken by itself can be recognised as an accident, and then that the injury must be shown to have followed as a consequence from that specific event. But this is just the argument that was rejected in *Fenton* v. *Thorley*. It is unnecessary to say more, but I venture to add that the argument seems to me to rest upon a misreading of the statute, which can only have arisen from a failure to give any exact attention to the actual words. The statute does not speak of an accident as a separate and distinct thing to be considered apart from its consequences, but the words "by accident" are introduced, as Lord Macnaghten says, parenthetically to qualify the word "injury." The question therefore is whether the injury can properly and, according to the ordinary use of language, be called accidental. Another point which has been strenuously maintained in various cases could hardly have been stated were it not for the same deviation from the exact words of the statute. It is said that a disease is not an accident and is therefore excluded from the scope of the enactment. This seems to be suggested by an ambiguity in the use of the word "accident," which may either denote a cause or an effect; and the argument, assuming the latter meaning to be intended, is that no injury can be called accidental unless it be a visible hurt to the body, apparently caused by some external force. But there is no support for this notion to be found in the statute. For the statutory form of words gets rid of the double meaning completely. It is impossible to read the words "by accident" in the connection in which they occur as denoting lesion or injury of any kind or anything but the way in which injury may have happened. The conclusive answer, however, is that in the case of *Drylie*, 1913 S.C. 549, 50 S.L.R. 350, where the argument was maintained with great force by Lord Salvesen, it was distinctly rejected by the decision of the Court, which was approved by this House in the case of *Coyle* v. *Watson*. This was in accordance with previous decisions of the House, and I apprehend it must now be taken as settled that while a disease is not in itself an accident, it may be incurred by accident, and that that is enough to satisfy the statute. On this point, indeed, the statute is its own interpreter. For the section which enables certain industrial diseases to be treated as accidents, although in fact they are not accidental, provides that this is not to affect the right of a workman to recover compensation in respect of a disease to which the section does not apply "if the disease is a personal injury by accident in the sense of the Act."

I desire to add that I do not participate in the difficulties which Lord Johnston seems to have experienced in reconciling his opinion in the present case with the decisions in *Eke* v. *Hart Dyke*, [1910] 2 K.B. 677, and *Steel* v. *Cammell, Laird, & Company*, [1905] 2 K.B. 232, and with the statutory conditions as to the notice of accident which must be given to the employer. These decisions are based on the undisputed principle that disease unconnected with accident is not within the scope of the enactment; and as regards the facts it was held that a disease contracted gradually from continuous exposure to sewer gas, but which could not be related to any particular time or to any unforeseen and undesigned event as the origin of the mischief, could not properly be described as the result of accident. Whether this was right or wrong as an inference of fact it is unnecessary to inquire. But nothing could be further from collision with the principle on which the present case must be decided. I do not doubt that accident must mean something of which notice can be given. But the Stated Case sets out a perfectly definite event at a definite time and place, and there could be no difficulty whatever in complying with the condition for notice. What may have been the best form of notice in the present case it is not for us to consider, because we know nothing about the notice actually given, except that no

objection has been taken to it, and we must assume that it satisfied the statute.

LORD SHAW—The Stated Case narrates that the respondent was a brusher employed by the appellants in a coal mine. On 28th October 1914 on going down the pit he was directed to enter a body of water which had been accumulating owing to the breakdown of a water pump five days before, and to bale out the water. He required to stand up to his chest in the cold water, and this he did for eight hours. He contracted sub-acute rheumatism. The Sheriff finds "that the rheumatism was caused by the extreme and exceptional exposure to cold and damp to which he was subjected on the occasion in question."

I do not see how it can be argued that this finding was not one of fact, nor do I see how, that being so, it did not justify the finding in law that the words of the statute were affirmed, viz.—That the appellant sustained "an injury by accident arising out of and in the course of his employment."

Injury by accident is a composite expression. It includes a case like the present, viz., the contraction of disease arising from extreme and exceptional exposure. This expression—contraction of disease—might also, no doubt, be analytically treated, and it might be said that the disease was the injury and its contraction the accident, but that carries the matter no further, and in both cases the composite synthetic expression brings the events together just as they happen in life and in fact.

This construction besides being most simple prevents the confusion that is apt to arise by the supposed difficulty of applying the Act because the event cannot be fixed in date. The disease and its contraction stand together so far as date is concerned, and in this case that date was the 28th of October.

The cases of *Drylie* in the Court of Session and *Coyle* (*Brown*) in this House dealt with physical occurrences analogous to that in the present instance, and the same principle as that now given effect to was there applied.

On the wider ground, apart from precedent, I do not doubt that the statute has been correctly applied, and that the appeal should fail.

LORD PARMOOR—The respondent was a miner who was working in the employment of the appellants as a brusher at their Newton Pit, Kenmuirhill Colliery, when on 23rd October the water pump broke down and a large quantity of water accumulated in the pit-bottom. These facts form part of the history of the case, but I think it is impossible to say that there is any connection between the injury in respect of which the claim is made and the accident of the breaking down of the water pump on 23rd October.

On the 28th October the respondent was directed to go down the pit, and was employed to bale water from the pit-bottom. It is not denied that in the course of this employment and arising out of it he contracted an attack of sub-acute rheumatism rendering him unfit to work. The Sheriff-Substitute has held that it was established as a fact that the rheumatism from which the respondent suffered was caused by the extreme and exceptional exposure to cold and damp to which he was subjected on the occasion in question, and found that there was an injury caused by accident, and that the appellants were liable to the respondent in compensation.

This finding is final, subject to an error in law. It was, however, argued on behalf of the appellants that there was no evidence from which it could competently be found that the incapacity of the respondent was attributable to accident. The Court of Session affirmed the determination of the Sheriff-Substitute, and it is against this decision that the appeal is brought.

I cannot doubt that there was evidence from which the Sheriff-Substitute could competently find that the incapacity of the respondent was attributable to an injury by accident, using the word accident in its ordinary natural sense. The immersion in water, under conditions of extreme and exceptional exposure to cold and damp, may be regarded either as an unforeseen or an untoward event, and in either alternative as an accident. This being so, it was within the competency of the Sheriff-Substitute to find in favour of the respondent. The miscalculation of conditions, or carelessness as to conditions, is a common cause of accident, as in the case of a person being accidentally drowned through miscalculation of the depth of the water into which he has entered, or through carelessness in making no calculation as to its depth. There is no error in law, and this ends the case.

The decision of the Court of Session should be affirmed and the appeal dismissed with costs.

LORD WRENBURY—In this case the workman sustained "personal injury" in the form of a physical ailment or illness, namely, subacute rheumatism. For the purpose of the construction of the Act it must be immaterial whether the "personal injury" is death, or the loss of a limb, or disease, or illness. In each case the personal injury is not, and cannot be, the accident. It is the result of the accident. The phrase in the Act is "personal injury *by* accident." In this and in every case the inquiry must be whether the personal injury which has been sustained was sustained in such a state of circumstances as that it was sustained "by accident."

I call particular attention to the fact that the language of the Act is not "personal injury by *an* accident," but "personal injury by accident." This means, I conceive, personal injury, not by design but by accident, by some mishap unforeseen and unexpected, accidental personal injury.

While on the one hand it is true that the personal injury cannot be the accident which satisfies the phrase "by accident," yet on the other hand it is at the same time

true that the result is a factor which assists in determining whether the injury was sustained by accident or not.

If a man undresses on the beach in order to enjoy a bathe in the sea, goes voluntarily into the water and is drowned by reason of the existence of a strong current, no one could deny that his death was accidental, that his death was by accident. In this case his going into the water was not accidental; the existence of the current was not accidental; but there was a factor which caused his death to be "by accident," and that was that unintentionally—perhaps by ignorance—he miscalculated the forces with which he had to do; he did not know of the current, or he thought that he was a strong enough swimmer to cope with it. He was wrong. The mishap which resulted from his bathing in this dangerous place was accidental. He had no intention or thought of going to his death. No other person intervened to conduce to the result. The sufferer's death was an unexpected event, an untoward result; it was by accident. If he had not been drowned it would be accurate to say that happily there had been no accident.

That which I endeavour to express is perhaps best summarised by saying that although the "personal injury" (the death or disease or whatever it is) cannot be the accident, yet the contraction of the disease or the incurring of the death may be by accident. The fact of disease is not an accident, but the contraction of disease may be by accident. Section 8 (10) in using the words, "if the disease is a personal injury by accident," means, I think, "if the disease is a personal injury incurred by accident."

After these general observations I do not feel that any useful purpose will be served by travelling through the numerous cases which have been cited. The question is whether such facts have been found as that the arbitrator could from those facts arrive at the conclusion that the rheumatism was contracted under such circumstances as that the personal injury was by accident. The only finding which I need set out is—"9. That the rheumatism from which the respondent suffered was caused by the extreme and exceptional exposure to cold and damp, to which he was subjected on the occasion in question."

Suppose the events had been that under directions given by the employer the man had gone into the water, and it had proved unexpectedly to be 8 feet deep, and that he had been drowned. No one, I think, would dispute that his death would have been by accident. The accident would have arisen from miscalculation or ignorance as to the depth of the water, by reason of which the man was exposed to danger and was drowned. Is there any difference of principle between the case in which the water went over his head and caused death and the case in which the water extended as high as his chest and caused rheumatism? I think not. In all these cases it is essential to bear in mind that the appellate Judge has not to determine whether he would have arrived at the conclusion at which the arbitrator arrived, but has to see whether such facts are found as that the arbitrator could arrive at that conclusion. Here the sequence of the language in the case after the finding which I have quoted shows that the arbitrator's finding is that the rheumatism was an injury caused by the extreme and exceptional exposure to cold and damp; in other words, that the extreme and exceptional exposure to cold and damp was that which caused the personal injury to be by accident. I take this to mean that neither employer nor man anticipated that the cold and damp would have been so extreme as to cause the illness—that the exposure of the man to it was an untoward event—that the result was unexpected—that the outcome was a mishap, and that consequently the injury was by accident. Whether I should have been of that opinion or not, I think the arbitrator could properly so hold.

I may add that the events of October 23 have, in my judgment, no bearing upon the matter. There was an accident on October 23 no doubt, but that accident caused nothing in the events of October 28. Suppose there is a railway accident by collision, and that a breakdown gang is sent to deal with the matter, and that a member of the breakdown gang is injured when dealing with it, the fact that he is sent to deal with the results of an accident by collision does not show that he suffered from the accident by collision. The fact that there was such an accident has no bearing upon the question whether he was injured by accident or not. So here the fact that the water would not have been there if the pump had not accidentally broken down on October 23 has no relevance to the question whether on October 28 the man was the victim of an accident.

The conclusion at which I arrive is that upon the facts found the arbitrator could hold as matter of law that the injury was by accident. The appellants, I notice, by their supplementary statement, submit that the question is whether "it could competently be held by the arbitrator that the respondent's incapacity was attributable to *an* accident." By this divergence from the words of the Act the appellants have, I think, fallen into an error, which taints all the subsequent submissions in their case. In the next sentence they alter the language which they use and adopt the language of the Act, but seemingly they fail to notice that they have done so.

In my judgment the appeal fails, and must be dismissed.

Their Lordships dismissed the appeal with expenses.

Counsel for the Appellants—The Hon. W. Watson, K.C.—Colin Smith (for H. W. Beveridge, serving with His Majesty's Forces). Agents—W. P. Craig, Glasgow—W. & J. Burness, W.S., Edinburgh—Beveridge, Greig, & Company, Westminster.

Counsel for the Respondent—Constable, K.C.—D. Oswald Dykes. Agents—O'Hare, Lyons, & Company, Glasgow—J. Douglas, Gardiner, & Mill, S.S.C., Edinburgh—Sewell, Edwards, & Nevill, London.