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

Act, and there is evidence which satisfies the Court that the interest charged in respect of the sum actually lent is excessive, ... and that . . . . the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may reopen the transaction and take an account between the money lender and the person sued . . . . and relieve the person sued from any sum in excess of the sum adjudged by the Court to be fairly due in respect of . . . . principal, interest, and charges, as the Court, having regard to the risk and all the circumstances, may adjudge to be reasonable. . . . ."

The Midland Discount Company, Limited, 1 Chancery Street, Leicester, brought an action against Donald Macdonald, farmer, Ballinluig, in which they craved decree for £30, the balance alleged to be due on a promissory-note for £65 granted by the defender.

The *facts* are given in the interlocutor (*infra*) of the Sheriff-Substitute.

The defender pleaded, *inter alia*—"(3) The amount claimed by the pursuers in name of interest or bonus . . . being excessive and unconscionable, the proper sum due should be adjudged and determined by the Court. 4. The transaction between the pursuers and the defender being harsh and unconscionable *quoad* the defender's interests, the Court should reopen the same and fix the sum to be paid by the defender to the pursuers in terms of the Money Lenders Act 1900 (63 and 64 Vict. cap. 51)."

On 8th April 1908 the Sheriff-Substitute (Sym) pronounced the following interlocutor—"Finds in fact (1) that the pursuers are registered money lenders at Leicester, and have an office in Glasgow, which is managed by the witness Stanhope; (2) that the defender is a crofter or small farmer near Guay Station, and has some experience of contracting work in the way of wood-cutting contracts; (3) that he is about forty-eight years of age; (4) that in 1907 he was desirous for some reason of obtaining a loan without anyone knowing of it for some purpose which is not ascertained; (5) that he had a bank account which does not seem to have showed a balance in his favour or any serious balance against him, but that he was unwilling to go to a local banker; (6) that he saw in a newspaper the advertisement of the pursuers, which sets forth that they were willing to lend cash 'by post' on promissory notes alone, 'no security or bonds required,' 'objectionable formalities and inquiries dispensed with,' 'strictly private'; (7) that he called at the pursuers' office in Glasgow on or about 18th July, and there filled up a form of application for a loan, and there wrote the letter (dated from his home address)—'I have filled the accompanying form, trusting it is to your satisfaction. My stock and wood-working plant will amount to about £700. I have no heavy debt, but short of cash to keep my work going"; (8) that on 24th July 1907 he had an interview at Guay by appointment with the pursuers' manager, the witness Stanhope — who charged him £2 for the expenses of his visit to Guay; (9) that it is not proved that at this visit the witness Stanhope put upon him any undue pressure or cozened him in any way; (10) that what happened was this, viz.—that the defender was unwilling to take Stanhope to his house but showed him part of his farm and some stock, and that the interview consisted of a walk and a talk of about an hour's duration, before the close of which, the defender, on the footing that £50 was to be sent on to him, granted the following promissory note '£65, Leicester, 24th July 1907.—I promise to pay to the Midland Discount Company, Ltd., . . . the sum of £65, for value received, by instalments in manner following, that is to say, the sum of £10 on 1st September 1907, and the sum of £10 on the first day of every succeeding month until the 1st day of December 1907, upon which date the whole balance then owing shall be paid, and in case default is made in payment of any one of the said instalments, the whole amount remaining unpaid shall become due and payable forthwith"; (11) that the witness Stanhope then left, and that the defender received £50 within a day or two thereafter; (12) that on 30th September the defender, who had paid £10 on 2nd September, sent £5 to the pursuers, saying in his letter—'I will remit the balance of £5 on Saturday first. I would like if you would allow me to forward my remittances on the 4th of each month instead of 1st, as I receive my monthly accounts then;" (13) that it is admitted that the defender sent £5 on 14th October, £5 on 9th November, £5 on 19th November, and £5 on 3rd December 1907—in all £35; (14) that on November 26th the pursuers sent to him a demand for £35 payable on the following Saturday, 1st December 1907, which demand is, according to the defender, the thing which led him to consider that he was being unfairly treated; (15) that the pursuers now sue for £30 as the amount due on his contract with them with 'legal' interest, by which they mean 5 per cent. from the date of citation till payment: With these findings of fact finds that the interest charged in respect of the sum actually lent is excessive, and that the transaction was in the circumstances harsh and unconscionable: Finds in law that the defender is entitled to relief: Finds that the defender is liable to repay to the pursuers the balance of the said sum of £50 now remaining due and unpaid after crediting all sums already remitted to them: Finds that the reasonable rate of interest which ought to be paid upon the sum of £50 actually lent to the defender is, having regard to the circumstances and the risk, 20 per cent. on £50 for four months, and that the defender is liable in interest on said balance of principal £15 at 5 per cent. from the date of citation till payment."

The pursuers appealed to the Sheriff (Johnston), who on 13th May 1908 pronounced this interlocutor—"Sustains the appeal: Affirms the findings in fact in the Sheriff-Substitute's interlocutor of 8th April 1908: *Quoad ultra* recals said interlocutor: Finds further in fact that having regard to the nature and sources of the

pursuers' information with reference to defender's circumstances at the time when the loan was entered into, £15 was not an unreasonable sum to stipulate for in respect of the risk of loss involved in advancing defender £50: Finds in law that the transaction was not harsh and unconscionable: With these findings, repels the defences and decerns in terms of the conclusions of the petition. . . ."

Note.—"In this case the defender was a small farmer and wood merchant who desired a loan for purposes of his own. The pursuers were a company whose business it is to lend money in order to make profit thereby. The pursuers were not in a position to put any pressure upon the defender to borrow from them and they did not do so. There was nothing to forbid the pursuers making a loan to the defender, and the defender cannot and does not complain of their having done so. In these circumstances it appears to me that to render the transaction harsh and unconscionable, whatever other elements must be present, this element is essential, that the lenders should have exacted terms more favourable to themselves than reasonable business prudence rendered proper in the circumstances known to them at the time.

"Now the circumstances were these. The defender was unknown to the pursuers. He came to them as a person desiring to borrow from money lenders anxious to get £50 and to keep the matter secret. A person who has recourse to such an expedient is generally very 'hard up,' and not a person in whose credit or ability to repay a prudent stranger would place much confidence. Defender showed the pursuers' representative a small farm with some stock upon it, but it is notorious that this does not go far in the way of showing solvency. He could offer no security. Otherwise pursuers were dependent entirely upon the defender's own statement as to his circumstances, and one does not need to be a money lender to know that statements as regards their circumstances by people short of money and anxious to borrow cannot be prudently relied upan.

"To a stranger so circumstanced pursuers were asked to hand £50. Now I do not think as a matter of business any prudent person would have done so unless he saw the chance of a very handsome return. Upon the bargain as made the pursuers stood to gain £15—less ordinary interest for the money—if things turned out right, and to lose £50 if things turned out wrong.

"Trying to put myself in their place I confess I would not, as a matter of business, have taken the risk for a penny less. It appears to me to be quite misleading in the case of a short risky loan of this kind to translate the premium into interest at so much per cent. per annum, and to compare it with ordinary interest. There are two elements in interest—a return to the lender for the use of his money and a payment to the lender for the risk of loss of his money. According to the nature of the loan one or other of these elements may predominate. The total amount of the former is proportionate to the endurance of the loan, but the latter need not be so. The use of money for twelve months is worth twelve times the use of a like sum for one month, but the risk of a loan for twelve months need not be twelve times or perhaps even twice greater than the risk of a loan for one month. It is misleading therefore to translate the return for a short hazardous loan into so much per centum per annum. A plausible American stranger may apply for £5 promising to pay £10 on the arrival of the mail to-morrow. That may be a perfectly reasonable transaction, but when translated into percentage per annum it works out 36,500 per cent.

"In re-forming a contract of this kind, if satisfied that it cannot stand, the Court, I presume, must allow the money lender such terms as he ought reasonably to have exacted when the contract was entered into. The amount proposed by the Sheriff-Substitute would have yielded the money lender, assuming punctual repayment to have been made, £3, 6s. 8d. on the transaction. If one pound thereof be attributed to ordinary interest for use of the money, that leaves forty-six shillings for the risk. This means that for the chance of forty-six shillings of profit the money lender is to lend without security £50 to a small farmer who is a stranger to him at a remote distance, and whose circumstances are such that he has recourse to money lenders to raise this sum, and who so far from suggesting appears to forbid any independent inquiry. I cannot think that any reasonable person, money lender or not, would as a matter of business have undertaken such a risk for such a return, and I believe that any company which did business on such lines would anticipate many even of their own clients in arrival at the Bankruptcy Court.

"I understand that the learned Sheriff-Substitute proceeds solely upon the terms of the bargain as being harsh and unreasonable. I am unable to agree with him, because I think that in the circumstances the terms were not more onerous than a prudent money lender ought as a matter of business to have required having regard to the risks as they appeared at the time and to the consideration that in transactions of this kind there must be large profits where the thing comes off all right to counterbalance the many cases of default and bankruptcy.

"As regards the evidence of the negotiations, I think that the defender fails to make out that he did not understand quite well that he was to get £50 and to pay back £65, and that monthly instalments were to be paid. So far as the evidence goes there was no constraint upon the defender to borrow this money on any terms to get him out of a pressing difficulty. On the contrary, he seems to suggest that he wanted the money for a speculation by which he expected to make a 'good bit.' I do not know what that speculation was, but the 'good bit' may have been a great deal more than the £15 and the risk no greater than that under-

taken by the money lender in making the advance."

The defender appealed, and argued—The interest charged was excessive, it was equivalent to 118 per cent. per annum. *Esto* that the transaction was not fraudulent, it was harsh and unconscionable, and therefore should be reopened — Money Lenders Act 1900 (63 and 64 Vict. c. 51), sec. 1 (1); *Samuel* v. *Newbold*, [1906] A.C. 461, at pp. 466 and 475. There was no appreciable risk, and that made the bargain harsh and unconscionable—*Exchange Loan Co.* v. *Torrance*, February 16, 1904, 11 S.L.T. 678; *Poncione* v. *Higgins*, October 29, 1904, 21 T.L.R. 11; *Carringtons* v. *Valerie*, May 16, 1905, 119 L.T. at p. 62.

Argued for respondents—The appellant had to establish (1) that the rate of interest was excessive looking to the risk run, and (2) that the transaction was harsh and unconscionable—*per* Lord Macnaghten in *Samuel* v. *Newbold* (*cit. sup.*) at p. 469. This he had failed to do. In *Samuel* (*cit. supra*) there was really no risk, so that the rate charged was clearly excessive. It was misleading to translate the rate charged into a rate per cent. per annum, for the rate charged was not strictly interest, but interest plus insurance. The lender was entitled to a bonus or premium to cover the risk run. The parties dealt on an equal footing; there was no pressure and no fraud. Further, no security was given for the advance. The borrower could not have got the money on more favourable terms from a bank or a solicitor. That being so, the Court would not re-form the contract. As to the rate of interest, which the Court had held not to be excessive, reference was made to *Pall Mall Bank, Limited* v. *Philip*, June 14, 1904, 41 S.L.R. 621; *Davis & Sons, Limited* v. *M'Nally*, July 12, 1904, 12 S.L.T. 234; *Carringtons Limited* v. *Smith*, [1906] 1 K.B. 79.

At advising—

LORD M'LAREN—This is an action at the instance of a money lender carrying on business under the name of the Midland Discount Company. The sum claimed is £30, which is the balance of principal and interest due on a loan of £50 secured by a bill for £65. The defences are founded on the provisions of the Money Lenders Act 1900, especially the first section thereof.

Now the object of this Act evidently is to give relief to unwary and necessitous persons against the extortionate demands of creditors who have taken advantage of their inexperience. The object is a laudable one, and I am sure that your Lordships would desire, as far as possible, to give effect to the purpose of the statute according to its true meaning and construction. But then I think it is impossible to read the statute without seeing that it was not intended that necessitous borrowers should be entirely relieved from the consequences of their own improvidence or carelessness as to money matters, and that the statute is only directed against the grosser forms of usurious transactions.

The leading enactment is contained in section 1, sub-section 1, and in a case which falls under the statutory definition or description the Court is empowered to reopen the transaction, to take an account between the money lender and the person sued, and "to relieve the person sued from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of such principal, interest, and charges as the Court, having regard to the risk and all the circumstances, may adjudge to be reasonable." The powers of the Court are thus very clearly defined, and while it is no doubt true that the duty put on the Court is rather discretionary than strictly judicial, this is no more than may be said regarding many other legislative provisions of our time in which discretionary powers are devolved upon the Courts of Justice, as being in the opinion of Parliament the authorities best qualified to exercise such powers in a neutral and absolutely impartial spirit.

In the circumstances of the present case which I shall immediately state, I should not have much difficulty in coming to the conclusion that £65 payable by instalments extending over a period of four months is in excess of a creditor's reasonable claim for interest and risk on a loan of £50 to a person who gave no security, but is not shown to have been in embarrassed circumstances. But my difficulty arises on the introductory words or hypothesis of the enactment, because, as I have already observed, the statute does not profess to give relief except against the grosser cases of usury and oppression.

Now the cases in which the Court is empowered to interfere are thus defined, viz., there must be evidence which satisfies the Court "that the interest charged in respect of the sum actually lent is excessive," or that the amounts charged for expenses, inquiries, and so on, are excessive, "and that in either case the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief." In such cases, and in such only, the Court is empowered to re-open the transaction. It is therefore necessary, on a review of the facts, to consider, not only whether the charge of £15 for the use of £50 for four months is excessive, but also whether the bargain is, in the language of the statute, harsh and unconscionable, because the defender must satisfy us as to both conditions in order that he may have the account re-opened.

The defender is a farmer in Perthshire, and, according to his own statement in the proof, he in July 1907 was in want of £50 for some purpose which he does not explain, and having no security to offer he applied to the pursuers at their office in Glasgow for an advance of that amount. A representative of the pursuers' firm came to see him and looked at his farm, and as a result of their interview this person offered him a loan of £50 in exchange for a bill for £65, to be repayable by instalments during a period of three months. At the request of the defender the period of pay-

ment was extended to four months. The defender signed the bill, and received by post a remittance of £50. It is found by the Sheriff-Substitute, whose findings in fact were affirmed by the Sheriff, that no pressure was used by the pursuer to obtain the bill, and this finding is in accordance with the evidence. The Sheriff-Substitute found in law that the defender was entitled to relief under the statute; but this finding was disaffirmed by the Sheriff, who was of opinion that the transaction was not harsh and unconscionable, and gave decree in terms of the conclusions of the petition.

In considering the merits of the case I think it must be taken on the defender's statement that he was not in a position to get the sum of £50 which he required from his bankers, or by a loan on security, because he does not say that he had any security to offer.

Supposing that he had anything to offer in the form of security, it may be kept in view that a loan of so small a sum as £50 on security was not a transaction in the ordinary course of business, and also that a loan on security could not have been got for less than a year, and on payment of the legal expenses of a security transaction. But as the defender had no security to offer he would have had to insure his life and to assign the policy to his creditor, which would have involved payment of a premium and legal expenses.

But I do not think that such a sum as £50 could have been raised in this way, as it was not a transaction in the ordinary course of business. It follows in my opinion that the defender had no other way open to him of getting the money except from a money lender, who, having no security, would of course be entitled to charge a relatively high premium to cover the risk which he undertook.

It may be that £15 was in excess of the sum required to cover interest and risk, but of this it is very difficult to judge. I think that is a fallacy in considering the question as one of percentage. If the sum required had been £500 instead of £50, and the premium £150, the disproportion of the premium to the loan would be very evident, supposing the circumstances of the borrower to be such that he might reasonably be expected to be able to repay the loan. But then this was a small transaction, and I can understand that the money lender's position might be that he would not enter into any transaction, great or small, for a profit of less than £15.

Be this as it may, I think that the defender, voluntarily, and without pressure, concealment or fraud practised upon him, agreed to give a bill for £65 in exchange for an advance of £50, and if he could not get the money on better terms, he must have considered when he signed the bill that he was willing to submit to a loss of £15 in return for the accommodation which he instantly required. I am unable to say that this was a transaction which the law would regard as "harsh and unconscionable." I have some difficulty in putting a definite meaning upon the statutory expression, but I think it at least implies some fault on the part of the money lender—some want of fairness in the transaction for which he may justly be held responsible. In the present case I see no evidence of such fault or want of fairness. The premium was perhaps too high, but excess in the amount is not sufficient under the statute to let in the discretionary power of the Court to re-form the contract, and I think there is no objection to this contract except that the rate was excessive. In all the circumstances I am of opinion that the Sheriff's judgment is sound; that we should find as the Sheriff has done in terms of the Sheriff-Substitute's findings in fact, and find in law that it is not proved that the transaction was harsh and unconscionable, and affirm the decree.

The LORD PRESIDENT, LORD KINNEAR, and LORD PEARSON concurred.

The Court refused the appeal and affirmed the interlocutor of the Sheriff.

Counsel for Pursuers (Respondents)—Hunter, K.C.—D. P. Fleming. Agents—Paterson & Gardiner, S.S.C.

Counsel for Defender (Appellant)—Sandeman—J. G. Jameson. Agent—Arthur F. Frazer, S.S.C.

Thursday, February 4.

FIRST DIVISION.

[Sheriff Court at Perth.

SCOTLAND *v.* SCOTLAND.

Loan—Proof—Writ—Endorsed Cheque.

In an action for repayment of an alleged loan, the pursuer produced a cheque drawn by her in favour of the defender, endorsed by him, and marked "paid" by the bank.

Held that the document did not infer an obligation to repay.

Haldane v. *Speirs*, March 7, 1872, 10 Macph. 537, 9 S.L.R. 317, *followed*.

Gill v. *Gill*, February 8, 1907, 1907 S.C. 532, 44 S.L.R. 376, *distinguished.*

On 17th June 1908 Miss Elizabeth J. Scotland, 89 Magdalen Green, Dundee, brought an action against her brother John Scotland, spirit merchant, Abernethy, for repayment of an alleged loan of £100. She averred—"(Cond. 2) On the 14th January 1895 . . . the pursuer advanced on loan to the defender the sum of £100 by cheque drawn by her in favour of defender on the Commercial Bank of Scotland, Dundee. The cheque was dated 14th January 1895, and was handed to the defender on said date, and was thereafter cashed by or for him. . . . (Cond. 3) In exchange for said cheque the defender gave pursuer his I O U for said sum at the time when he got the cheque. The pursuer handed the I O U to her mother to keep for her, but after her