LORD DUNDAS—I am of the same opinion. I think the question ought to be answered in the affirmative, but, like your Lordship, I desire to reserve my opinion upon the matter you have indicated until a case arises in which it is necessary to decide it. The Court would then have before it, as we have not, definite proved facts upon which to base their determination.

LORD ANDERSON—The complaint against the appellants, shortly stated, is that they used two unarmoured single-core cables in a roadway in Rimmon Pit, Shotts, where mechanical haulage was employed, contrary to certain sections of the Coal Mines Act 1911, and to general regulations issued thereunder. Of the sections said to have been contravened, section 60 (4) authorises the use of electricity in any mine subject to general regulations under the Act. Section 86 empowers the Secretary of State by order to make "such general regulations for the conduct and guidance of the persons acting in the management of mines or employed in or about mines as may appear best calculated to prevent dangerous accidents, and to provide for the safety, health, convenience, and proper discipline of the persons employed in or about mines." The general object of the regulations is thus to ensure the safe working of the mine. Sections 90 and 101 are concerned with penalties for breach of regulations and offences against the Act. The general regulation said to have been infringed is Regulation 129 (*c*), and the particular part of the regulation which applies to the present case provides that single-core cables protected by a metallic covering shall be used where the roadway conveying the cables is also used for mechanical haulage.

The essential averments set forth in the complaint were admitted by the appellants in the joint minute of admissions, the terms of which are quoted in the Stated Case.

The defence made by the accused at the trial was that the cables in question were within the exemption allowed by General Regulation 137 (*b*).

As the appellants found on the said exemption the *onus* is on them to bring the case within its terms. I am of opinion that they have not discharged that *onus*, and that they were properly convicted of the offence charged.

The scheme of the exempting regulation seems to be this—that the *status quo* in any working mine as at 1st June 1911 may be continued thereafter until 1st January 1920 unless the inspector of mines orders otherwise. In the present case two unarmoured single-core cables were, as at 1st June 1911, being used in the said mine in a non-haulage road. In such a road it was not necessary, and is not necessary under the 1911 Act, that the cables should be armoured. In the present year the appellants transferred these cables, without encasing them in metal, to a road in the same pit on which mechanical haulage is employed and used them there. The contention of the appellants was that as these cables had been in use before and after 1st June 1911 they had been enfranchised for use in any part of the pit. Logically the argument of the appellants would carry them much further. If their contention is sound, there seems no reason why these cables should not be used in their present condition in any other existing pit, or in any pit which may hereafter be sunk. The error of the appellants' contention seems to me to consist in regarding the exemption as applying to cables in themselves and apart from their environment. The language used imports that regard must be had to the place in which the cables are laid, and if this consideration be kept in view, it is obviously in the teeth of the regulations to transfer a cable from a roadway in which it is presumably safe to a roadway in which it presumably becomes a source of danger.

While agreeing with the conclusion at which the Sheriff-Substitute has arrived, I desire to reserve my opinion with reference to the general views which he has expressed in the stated case. The difficulty I experience in assenting to these views is that it is improbable that user "for like purposes and under like conditions" may recur. It is difficult to suppose that two haulage roads will exactly reproduce the same conditions either as to physical structure or as to the traffic which takes place on the roads. Accordingly I think it inadvisable to say anything of a general character that might lead mineowners to alter the *status quo* as at 1st June 1911, which it seems to me the provisions of the regulations aimed at preserving as a condition of exemption.

The Court answered the question in the case in the affirmative and dismissed the appeal.

Counsel for the Appellant—Horne, K.C. —D. P. Fleming. Agents—W. & J. Burness, W.S.

Counsel for the Respondents—Solicitor-General (Morison, K.C.)—W. T. Watson. Agent—Sir W. S. Haldane, W.S., Crown Agent.

COURT OF SESSION.

Friday, December 18.

SECOND DIVISION.

[Sheriff Court at Glasgow.

SHAW (GLASGOW), LIMITED *v.* MACFARLANE.

Master and Servant—Workmen's Compensation Act 1906, *sec.* 1 (1)—*Accident Arising "out of" the Employment—Assault Causing Fall over Molten Metal.*

An ironmoulder's helper while engaged at work in a stooping position using a hammer between his legs and in close proximity to two boxes of molten metal was struck by an intoxicated stranger, and in consequence of

the blow lost his balance and falling between the boxes sustained injuries by bruising and burning. *Held* that it was competent for the arbitrator to find that the workman was injured by accident arising out of and in the course of his employment.

In an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between Shaw (Glasgow), Limited, ironfounders, Maryhill Ironworks, Glasgow, *appellants*, and George Macfarlane, ironmoulder's helper, residing at 55 Raglan Street, Glasgow, *respondent*, the Sheriff-Substitute (MACKENZIE) found the workman entitled to compensation, and at the request of the employers stated a Case for appeal.

The Case stated—"The following *facts* were established—(1) That the respondent is an ironmoulder's helper, residing at 55 Raglan Street, Glasgow, and the appellants are ironfounders, Maryhill Iron Works, Glasgow. (2) That on 3rd February 1914 the respondent was employed by the appellants in their works at Maryhill; that he was working along with James M'Coll, ironmoulder, as his helper. (3) That on the afternoon of said date another ironmoulder named M'Donald, then in a state of intoxication, entered the appellants' works without their knowledge or permission, in the company of a helper named Elliot. Both of these men had been in the appellants' employment, Elliot having worked along with M'Coll as his helper, but neither M'Donald nor Elliot was employed by the appellants on said date. (4) That Elliot made application to M'Coll, while the latter and the respondent were working together, for lying time due to Elliot, which was refused. During the conversation arising out of this application, M'Donald in his state of intoxication, without warning, afterwards struck a blow at respondent, unknown to and unseen by the respondent, while he was engaged in close proximity to boxes of molten metal and in a dangerous place in a stooping position using a hammer between his legs; that the respondent in consequence of said blow and of his position when it was struck, lost his balance and fell between two iron boxes containing molten metal over which were three iron weights of fifty-six pounds each; that his right arm was burned, and his right elbow was bruised by the falling of said weights upon it. (5) That respondent was incapacitated for work until 12th March 1914, being a period of five weeks and two days. (6) That the respondent had worked for five days previously with appellants, and that the average weekly wage of workmen in the same employment as the respondent is 29s. (7) That the assault of a workman while employed by the appellants was quite exceptional. (8) That said accident arose out of and in the course of the respondent's employment with the appellants. I found that the appellants were liable in payment of compensation to the respondent, and awarded the same at the rate of 14s. 6d. per week from 3rd February 1914 until 12th March 1914. I also found the appellants liable to the respondent in expenses."

The *questions of law* for the opinion of the Court were—"1. Did the respondent sustain personal injury by accident arising out of and in the course of his employment with the appellants? 2. Is the respondent entitled to compensation with expenses as awarded?"

Argued for the appellants—The accident in the present case occurred in the course of but did not arise out of the employment. This was a mixed question of fact and law—*Trim Joint District School Board of Management* v. *Kelly*, [1914] A.C. 667, *per* Lord Shaw at p. 667, and Lord Dunedin at p. 713, which case differed from the present in that there were no facts found here to the effect that the risk of assault was incidental to the employment. The present case was ruled by that of *Falconer* v. *London and Glasgow Engineering and Iron Shipbuilding Company, Limited*, February 23, 1901, 3 F. 564, 37 S.L.R. 381, which was followed in *Mitchinson* v. *Day Brothers*, [1913] 1 K.B. 603. The accident must be taken as a whole, and even though the immediate cause of injury were something peculiar to the employment, that was not necessarily conclusive. The test was—Was the risk of injury caused by the particular accident increased by the nature of the employment—*Guthrie* v. *Kinghorn*, 1913 S.C. 1155, 50 S.L.R. 863; *Rodger* v. *Paisley School Board*, 1912 S.C. 584, 49 S.L.R. 413; *Malone* v. *Cayzer, Irvine, & Company*, 1908 S.C. 479, 45 S.L.R. 351; *Burley* v. *Baird & Company, Limited*, 1908 S.C. 545, 45 S.L.R. 416; *Craske* v. *Wigan*, [1909] 2 K.B. 635, *per* Cozens Hardy, M.R., 638; *Andrew* v. *Failsworth Industrial Society*, [1904] 2 K.B. 32; *Wicks* v. *Dowell & Company, Limited*, [1905] 2 K.B. 225; *Plumb* v. *Cobden Flour Mills Company, Limited*, [1914] A.C. 62; *Morgan* v. *Owners of Steamship "Zenaida,"* 1909, 2 B.W.C.C. 19; *Murphy* v. *Berwick*, 1909, 2 B.W.C.C. 103; *Blake* v. *Head*, 1912, 5 B.W.C.C. 303; *Fitzgerald* v. *W. G. Clarke & Son*, [1908] 2 K.B. 796; *Collins* v. *Collins*, [1907] 2 I.R. 104.

Argued for the respondent—The accident arose out of the employment. The injury was due to a sequence of three events—(1) a deliberate blow, (2) the attitude of the injured man which was due to his employment, and (3) his dangerous surroundings. The concurrence of several simultaneous or contemporaneous events in producing a certain event satisfied the test that the accident arose out of the employment—*Adamson* v. *George Anderson & Company (1905) Limited*, 1913 S.C. 1038, 50 S.L.R. 855; *Manson* v. *Forth and Clyde Steamship Company, Limited*, 1913 S.C. 921, 50 S.L.R. 687; *Challis* v. *London and South-Western Railway Company*, [1905] 2 K.B. 154. If the injury had been the direct result of the blow the position would have been different—*Wilson* v. *Laing*, 1909 S.C. 1230, 46 S.L.R. 843. In *Hughes* v. *Bett*, November 18, 1914, 52 S.L.R. 92, the Court had abandoned the test that the risk must be specially incidental to the employment. But in any event that test was satisfied in the present case—*Row-*

land v. *Wright*, [1909]1 K.B. 963; *Wicks* v. *Dowell* (*cit. sup.*).

At advising—

LORD DUNDAS—The facts in this Stated Case disclose that the respondent was on 3rd February 1914 employed as "helper" to an ironmoulder named M'Coll at the appellants' ironworks at Maryhill. On that day a man named M'Donald, who was intoxicated, came into the works without the appellants' knowledge or permission, accompanied by another man Elliott. The respondent and M'Coll were then working together. Elliott made some application to M'Coll for money alleged to be due to him by the latter, and during the ensuing "conversation" the intoxicated M'Donald struck a blow at the respondent unknown to and unseen by him. The respondent at the moment of this unwarranted assault was engaged at work "in close proximity to boxes of molten metal and in a dangerous place, in a stooping position using a hammer between his legs," and "in consequence of said blow, and of his position when struck, lost his balance and fell between two iron boxes containing molten metal, over which were three iron weights of fifty-six pounds each." His right arm was burned, and his right elbow was bruised by the falling of said weights upon it, and he was in consequence incapacitated for work for about five weeks. "The assault of a workman while employed by the appellants was" (as might be supposed) a "quite exceptional" occurrence. The Sheriff-Substitute found that "said accident arose out of and in the course of the respondent's employment by the appellants" and awarded compensation. It was admitted at our bar that the respondent sustained a personal injury by accident arising in the course of his employment, but the appellants maintained that the accident did not arise out of the employment.

Considering this question apart from authority and simply upon the facts proved, and the words of the statute in their natural and ordinary meaning, I should agree with the Sheriff-Substitute in holding that the accident arose out of the employment. One of the risks obviously incidental to the employment of this ironmoulder's helper was that of working in the immediate vicinity of the molten metal and heavy weights, and on the occasion in question he was working under these conditions in a dangerous place and in a stooping position. The accident which befell him was, I take it, a fall, with the immediate result, naturally arising from his position and its attendant risks, of burns and bruises. I should have thought it idle to contend that because the accident, *i.e.*, the fall, was caused by a blow struck by an outsider we are to disregard the *causa proxima* of the injuries, viz., the fall in contact with hot metal and crushing weights, and ascribe the injuries to a more remote cause, viz., the blow, which clearly did not arise out of the employment.

When one turns to the authorities I think they support the conclusion I should have arrived at without their aid. We had ample citation of cases, but I shall allude only to some of those which figured most prominently in the debate.

In the first place, I think it is now fully settled that a claim for compensation under the Act is not excluded merely because the accident was caused by the ultroneous or even the felonious act of a third party, provided the workman sustained it owing to his being specially exposed by the nature of his employment to the risk of danger which actually befell him, *e.g.*, *Challis*, [1905] 2 K.B. 154; *Manson*, 1913 S.C. 921; *Raine*, [1910] 2 K.B. 689; *Trim*, [1914] A.C. 667. In the second place, it seems to be established that one must distinguish between the *causa proxima* of the injuries and any antecedent cause of the accident. If the immediate cause of the injuries was an accident arising out of the employment it is immaterial to investigate its prior cause or causes. Thus in the present case, if the burns and bruises directly resulted from an accident, viz., a fall which by the very nature of the respondent's employment was attended with special risk and danger of such consequences, the cases seem to show that the accident arose out of the employment, and that the Court need not and ought not to inquire whether the fall itself was caused by something not arising out of, and indeed quite unconnected with, the employment, viz., the unwarrantable blow of an intoxicated stranger.

Mr Horne urged that this conclusion would run counter to a long series of well-known cases, of which *Malone*, 1908 S.C. 479, and *Dunham* v. *Clare*, [1902] 2 K.B. 292, are examples, where it has been laid down that if resulting injury or death be in fact traced, even by a long (and it may be improbable) train of causation to an accident arising out of and in the course of the employment, compensation will be awarded. His argument involves, I think, a plain fallacy, for it by no means follows, to my mind, that where the injury results from an accident the risk of which is peculiarly incidental to the occupation the Court is bound (or entitled) to go further back and trace the remoter causes which may have led up to the occurrence of the accident. Two cases, one English and one Scots, may be cited as especially in point upon this head, viz., *Wicks* and *Manson*.

In *Wicks* a workman employed in unloading a ship, who was required in the course of his duty to stand by the open hatchway, was seized with an epileptic fit while at work—he had had such fits on three previous occasions—fell into the hold and was seriously injured. The Court of Appeal held, reversing the County Court Judge, that regard must be had to the proximate cause of the accident, viz., the man's necessary proximity to the hatchway; that it arose out of as well as in the course of his employment, and that he was entitled to compensation. Collins, M.R., pointed out, although the cause of the fall was a fit, the cause of the injuries was the fall itself, and added—"When we get rid of the confusion caused by the fact that the fall was originally caused by the fit, and the confusion involved in not dissociating the injury and its actual physical cause from the more remote cause, that is to say, from the fit,

the difficulty arising from the words 'out of the employment' is removed. . . . Upon the authorities I think the case is clear. An accident does not cease to be such because its remote cause was the idiopathic condition of the injured man. We must dissociate that idiopathic condition from the other facts, and remember that he was obliged to run the risk by the very nature of his employment, and that the dangerous fall was brought about by the conditions of that employment." Matthew, L.J., said that "the case affords an illustration of the rule that one should look to the immediate and not to the remote cause. . . . In my opinion we ought not to go back along the train of circumstances and trace the accident to some remote source, when it is plain that the man was in fact injured by falling from the place where he was standing, and where it was his duty to stand, in discharge of his duty to his employer." In the case before us the fall was the accident. It was the respondent's duty to be in the dangerous place and among the dangerous surroundings, and the accident arose out of his employment none the less because it was occasioned by the blow struck by the intoxicated M'Donald. In *Manson's* case a ship's carpenter, working on the poop of a vessel lying in harbour, was severely burned owing to some shavings by which he was surrounded being ignited by a match carelessly thrown down by a shore labourer. The carpenter's trousers happened to be saturated with inflammable oil which had leaked from a barrel he had shifted in the course of his work, and thus readily caught fire from the shavings. The Court held, reversing the determination of the arbitrator, that the man was injured by an accident arising out of and in the course of his employment. The Lord President (Dunedin) pointed out the fallacy of the employers' argument—"It was not the throwing down of the match that was the accident, the fire was the accident, but the throwing down of the match was the cause of the accident. It was through the accident, namely, the fire, that the pursuer was injured. Well I think that was a risk to which he was exposed to a greater extent than other people because of his employment. Other people were not exposed to the risks of that fire, because they had not to work on the poop among these shavings, and to work in oily trousers. He was bound to work under those conditions." In the present case I think the fall into hot metal was the accident, though the blow was the cause of the accident; it was through the accident that the respondent was injured; and he was specially exposed by the very nature of his employment to the risk of a fall into contact with molten metal. A third case upon which the appellants sought to rely seems to me to be strongly against their contentions, viz., *Mitchinson.* Mitchinson, a carter, was standing on the pavement in charge of a horse and van belonging to his employers; Parkes, a drunken man, stopped near the horse's head, and the carter warned him to move away lest the horse should hurt him; Parkes incontinently struck Mitchinson two heavy blows which caused his death. The Court of Appeal, reversing the County Court Judge, held that the employers were not liable in compensation. The grounds of judgment as stated by Lord Sumner (then Hamilton, L.J.) were "that the risk of this accident was not proved by evidence to be incident to the employment—that it was plainly on the evidence one to which any other person who crossed Parkes' path was exposed whatever his employment; and that there is an entire absence of any authority for treating injury arising from a third party's crime as injury by accident arising out of the employment, except where the employment is special and involves an obligation to face such perils." The facts of the case stand obviously in direct contrast to those of the case before us. Some observations by Buckley, L.J., emphasise the contrast. His Lordship said—"The injury resulted not in any sense from the employment but from the brutality of a drunken man. Mark that I here affirm two things. The first, negative, that it did not result from the employment. The second, affirmative, that it did result from the brutality of a drunken man. Had the answer to the former been in the affirmative, it may be that the answer to the latter would have been immaterial." Buckley, L.J., added that "Nothing can come 'out of the employment' which has not in some reasonable sense its origin, its source, its *causa causans*, in the employment. That the injury must be one resulting in some reasonable sense from a risk incidental to the employment has, I think, been decided over and over again." In my judgment the facts of the case before us will stand the test thus put; those in *Mitchinson's* case would not.

Mr Horne further argued that a decision adverse to him in this case would directly conflict with the two cases of *Burley*, 1908 S.C. 545, and *Falconer*, 1901, 3 F. 564. I do not think this is so. Both cases belong to the class dealt with in Mr Adshead Elliot's excellent work under the heading "Accident due to larking." I shall not take up time by resuming the facts of either case; in both the Second Division held that there was not an accident arising out of the employment. In *Burley* it may be said that the Lord Justice-Clerk's opinion, so far as based upon the ground that "what caused the injury was not in any sense an accident, but was a fault by a wrongdoer who was acting in a wilful and unjustifiable manner," cannot, looking to the subsequent march of judicial decision, now be supported as sound law; but the other Judges, Lord Low and Lord Ardwall, who along with the Lord Justice-Clerk formed the majority of the Court—Lord Stormonth Darling dissented from the judgment—considered that the accident consisted in the throwing of a missile at the respondent Burley by a fellow-workman in the course of some "larking" in the mine; and that that was not a risk incidental to Burley's employment. It does not appear to have been argued—and it may not have been arguable—that the accident consisted in Burley, in

an effort to avoid the missile, striking his head against a projection on the wall, and being thus injured through a risk incidental to his employment. I do not see that the decision in *Burley's* case—which I observe was referred to by Lord Dunedin in the recent case of *Trim*—has any application in the case before us. *Falconer's* case was a narrow decision, one of the three learned Judges (Lord Moncreiff) dissenting; it was doubted by Lord Young in *M'Intyre* (1903, 6 F. 176) and by Lord Stormonth Darling in *Burley's* case; but it has been judicially recognised in England, *e.g.*, in *Challis* and in *Mitchinson*, and I am not concerned to impugn its soundness as a decision. The majority of the Court seem to have considered that a fall over a bucket in a smithy, caused by a shove from some "larking" fellow-workers, was not an accident specially incidental to or arising out of the employment of the injured man. The Lord Justice-Clerk observed that "the object of the statute was to secure compensation to workmen who were engaged in occupations which exposed the employees to danger from which other occupations were free. But it was as against accidents incidental to the special employment that the benefit of the statute was given." It does not appear to me that the law thus laid down would present any obstacle to the decision of the present case in the respondents' favour.

In conclusion, I may refer to the opinion of the Master of the Rolls in *Craske* v. *Wigan* ([1909] 2 K.B. 635), cited and approved by Lord Dunedin in *Plumb* ([1914] A.C. at p. 68). I quote the passage with the alteration of "or" into "and," which the Master of the Rolls desiderated in the later case of *Mitchinson*. "It is not enough for the applicant to say 'The accident would not have happened if I had not been engaged in that employment, and if I had not been in that particular place.' He must go further and must say, 'The accident arose because of something I was doing in the course of my employment, or because I was exposed by the nature of my employment to some peculiar danger.'" It appears to me that the respondent here is able upon the facts to meet the additional test indicated in the concluding words of the quotation.

I have dealt at length with the arguments submitted, and with some of the authorities cited at our bar, rather because of the earnestness and ability of the former than from any great feeling of difficulty in arriving at a determination of the case. I think the learned arbitrator was quite right in holding that this accident arose out of the respondent's employment. But it will be sufficient, and more in accordance with practice, if we answer the two questions put to us—which are not very well stated—by finding that upon the facts established it was competent for the arbitrator to find that the respondent sustained personal injury by accident arising out of and in the course of his employment with the appellants.

LORD JUSTICE-CLERK—If I may say so, I am grateful to Lord Dundas for the very clear exposition given in his opinion of the law in these workmen's compensation cases as settled by decision in the House of Lords.

It is now authoritatively ascertained in the interpretation of the word "accident" that it covers a case of deliberate intentional injury, even a murderous injury. After the case of *Trim*, [1914] A.C. 667, there is no more to be said on this matter. Had the question been open I should have been of opinion with Lord Dunedin in the case of *Trim*, where he says, referring to the meaning of an accident, and adopting the words of Lord Halsbury in *Brintons*, [1905] A.C. 230, "The language of the statute we are called upon to construe must be interpreted in its ordinary and popular meaning"; and when he further says—"For myself, I confess that it seems so clear that in popular language the injury in this case"—a case of malicious killing—"was not an injury caused by accident, that it is difficult for me to use terms which might not appear wanting in respect to those who have expressed themselves otherwise. . . . To my thinking the word 'accident' in popular language is the very antithesis of design." Had such words been used in a case where the judgment was in accordance with them I should have heartily concurred. But I am bound to bow to the decision by which it has been held that the word "accident" covers such a case, and I do so bow.

This case is one in which there were circumstances not coming up to the conditions in *Trim's* case. A blow led to the injured man falling into a dangerous mass of molten metal. There was no deliberate intention to do such injuries. That is a long way within *Trim's* case. There was no design to cause the injured man to fall into the vessel of hot metal. The injuries resulted from the position in which the injured man happened to be standing—a much less difficult case than that of *Trim*.

I concur entirely in what has fallen from Lord Dundas, and agree that the appeal must be refused.

LORD HUNTER concurred.

LORDS SALVESEN and GUTHRIE did not hear the case.

The Court found in answer to the questions stated, that upon the facts established it was competent for the arbitrator to find that the respondent sustained personal injury by accident arising out of and in the course of his employment with the appellants, and therefore dismissed the appeal.

Counsel for the Appellants—Horne, K.C. —J. H. Henderson. Agents — Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Respondent—Constable, K.C.—Burnet. Agents—Simpson & Marwick, W.S.