instance either of the railway company or of the superior, the dues of superiority are redeemed.

We shall therefore affirm the interlocutor of the Lord Ordinary.

LORD MACKENZIE was absent.

The Court adhered.

Counsel for Pursuers — Murray, K.C. — Chree, K.C. — Thornton. Agent — Peter Macnaughton, S.S.C.

Counsel for Defenders—Blackburn, K.C. — Wark. Agents — Hope, Todd, & Kirk, W.S.

HOUSE OF LORDS.

Tuesday, April 28.

(Before Lord Dunedin, Lord Kinnear, Lord Atkinson, Lord Shaw, and Lord Parmoor.)

JOHN WATSON, LIMITED *v.* BROWN.

(In the Court of Session, January 30, 1913, 50 S.L.R. 415, and 1913 S.C. 593.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58)—*Accident—Pneumonia Following on Chill Caught through Prolonged Exposure to Draught Due to Wreck in a Shaft of a Mine.*

In consequence of a wreck in one of the shafts of a mine the miners were ordered to the surface. Those accustomed to ascend by the damaged shaft were directed to ascend by another shaft. They were detained an hour and a-half waiting until this shaft was free, the miners accustomed to use it being taken up first. While waiting they in their heated state were exposed to a down-draught of cold air. One of them caught a chill, upon which pneumonia supervened and he died. The arbiter in a claim for compensation found that his death was due to accident arising out of the employment.

Held (*rev.* judgment of the Second Division) that the arbiter's finding was right.

Alloa Coal Company v. *Drylie*, 50 S.L.R. 350, 1913 S.C. 593, *approved and applied.*

This case is reported *ante ut supra.*

Brown, the claimant, appealed to the House of Lords.

At delivering judgment—

LORD DUNEDIN—On the assumption that the case of *Drylie* was well decided I am of opinion that this case is ruled by that. I cannot help thinking on perusing the opinion of Lord Salvesen that that learned Judge really took the same view, although he did not wish to express a formal dissent from the views of the other members of the Second Division. It seems to me that here, as there, you have an accident interfering with the normal working of the mine, a consequential exposure of the workman to rigorous climatic conditions for a prolonged period, which exposure would not have been his fate but for the accident, and a finding in fact that the supervening illness was due to this prolonged exposure. There is no intervening circumstance depending on some cause other than the accident which occurs to break that chain of causation. I would illustrate what I mean by this by referring to the case of *M'Luckie* v. *Watson* (1913 S.C. 975, 50 S.L.R. 770), where the wetting which brought on the chill was not a necessary cause of the accident, but was due to the workmen's determination not to wait his turn for the cage but to stand in water in order to get in front of his fellows.

As regards the case of *Drylie*, I was a party to that judgment, and I have seen no reason to alter the opinion I then formed. I have the satisfaction of knowing that those of your Lordships who have considered that case for the first time on this occasion, have seen no reason to doubt that it was rightly decided.

I accordingly think that the present appeal should be allowed and the award of the arbitrator restored, and I move accordingly.

LORD KINNEAR — (LORD DUNEDIN intimated that his Lordship concurred).

LORD ATKINSON—This case has been very ably argued. The difficulties raised by the contention put forward by the learned Lord Advocate on behalf of the respondents arise, I think, from his effort upon one point at all events to disintegrate as it were the compound but injurious effect upon a workman of the forces or agents into contact with which he may by an accident be brought, separating the immediate and primary effect from the ultimate effect and endeavouring to establish a sequence of causation between them. He contended that the accident, under the Workmen's Compensation Act of 1906, must, to entitle the injured workman or his dependants to compensation, be the proximate cause of the personal injury, and insisted that in the present case the chill sustained by John Brown, the deceased workman, was the proximate cause of his death by pneumonia, and that the accidental breakdown or wreckage of the machinery of the mine in No. 2 shaft, so far from being the proximate cause of this chill, was either a mere historical event unconnected with it, or at least if a cause of it at all, a very remote cause.

By way of illustration I put to him during the progress of his argument the following question—Suppose an employer is during very cold weather in mid-winter driving in his motor car with two servants in front—his chauffeur and another—and suppose that when crossing a bridge over a river a tyre bursts, his car skids, and comes into collision with one of the battlements of the bridge with such force and violence that both servants are precipitated into the river below, the one being drowned and the other rescued, but rescued so tardily as to be thoroughly chilled, and that an attack of pneumonia is thereby induced, of which disease he dies—Would the dependants of

the first man be entitled to compensation under section 1 of the Act of 1906? The learned Lord Advocate answered in the affirmative that they would be so entitled. I then asked him—Would the dependants of the second servant be similarly entitled? and as I understood him he answered, as indeed the necessities of his case obliged him to answer, in the negative. But can there be any real distinction between these two supposititious cases in relation to this statute?

The accident, or the chapter of accidents —the primary accident, the bursting of the tyre,—the consequential accidents, the skidding of the car, the collision with the battlement of the bridge, and the precipitation into the river—are common to both cases. The element into contact with which the deceased servants were brought, the cold water, is the same. The injurious effect of this element upon them was different. It smothered the one. That was the injury in his case. It chilled the other so badly that disease supervened. That was the injury in his case. According to the contention of the Lord Advocate, as I understood it, the bursting of the tyre, though it was the primary accident which, through the agency of other accidents consequent upon it, brought about the prolonged exposure of the deceased to the action of the cold water, was not the proximate cause of death.

The principle upon which cases should be dealt with under the statute where death or incapacity is caused to a workman by a disease induced by an "injury by accident" is clearly laid down in the well-known anthrax case—*Brintons, Limited* v. *Turvey*, 1905 A.C. 230. Lord Halsbury, at page 233, is reported to have expressed himself thus —"When some affection of our physical frame is in any way induced by an accident, we must be on our guard that we are not misled by medical phrases to alter the proper application of the phrase 'accident causing injury,' because the injury inflicted by accident sets up a condition of things which medical men describe as disease. . . . It does not appear to me that by calling the consequences of an accidental injury a disease one alters the nature or the consequential results of the injury that has been inflicted." Lord Macnaghten, page 234, said—"Speaking for myself I cannot doubt that the man's death was attributable to personal injury by accident arising out of and in the course of his employment. The accidental character of the injury is not, I think, removed or displaced by the fact that, like many other accidental injuries, it set up a well-known disease, which was immediately the cause of death, and would, no doubt, be certified as such in the usual death certificate." Lord Lindley, at page 238, said—"In this case your Lordships have to deal with death resulting from disease caused by an injury which I am myself unable to describe more accurately than by calling it purely accidental."

In this present case there were two shafts to the respondents' mine, the down-cast shaft No. 1 and the up-cast shaft No. 2. The current of air which ventilated the mine passed down the former shaft.

The deceased workman John Brown started to work in the mine at 7 a.m. on the morning of the 26th of June 1911 at a place which was dry, with a good current of air passing through it. Brown and his mates were sweating as they worked, their clothes were somewhat wet from this, not from any other cause. Some breakdown of the machinery connected with shaft No. 2 took place. Brown and his companions were ordered owing to this to ascend to the surface, and while proceeding to No. 2 shaft to ascend in the ordinary and accustomed way they were directed to ascend by No. 1 shaft instead. They attempted to do so, but were checked at the mid-landing for the very prolonged and entirely abnormal period of one and a-half hours, during which the down current of cold air was playing upon them. Brown, the deceased, was badly chilled by this prolonged and abnormal exposure. Pneumonia was thereby induced, and from this disease he died. The immediate cause of the delay was this, that the men from the lower workings who were usually raised to the surface by shaft No. 1 had not been raised, and Brown and his companions were detained till these lower workers were raised. Thus Brown and his companions were, owing to the accidental breakdown of the machinery in No. 2 shaft, placed by the orders of their master in a position where they were, through the accident of the prolonged and abnormal delay, exposed to the action of the current of air while they waited. That exposure was not expected, intended, or designed apparently either by the employer or workmen. It was one of the consequential accidental effects arising from the primary accident, the breakdown of the machinery, just as the prolonged immersion in the river of the servant who was rescued was in the supposititious case I have mentioned one of the consequential accidents of the bursting of the tyre of the motor car. This accidental but prolonged exposure was the cause of "the injury," the chill. The pneumonia was only the disease brought on by that injury.

I do not think this case can be distinguished on any solid ground from the case of the *Alloa Coal Company* v. *Drylie*, 50 S.L.R. 350.

There owing to the breakdown of a pump the water in a mine accumulated so that the workmen had to stop work. They went to the shaft to ascend and were kept waiting there for twenty minutes up to their knees in cold water, the cold air descending upon them. This abnormal exposure caused to the deceased a chill from which disease was set up. It would appear to me that the abnormal exposure to the action of the cold air and cold water in that case was on all fours with the abnormal exposure to the current of cold air in this case, and that the exposure in the latter case was quite as much an accident as in the former, and the chill quite as much an injury by accident in the latter case as in the former.

In my opinion, therefore, the question of

law stated by the learned Sheriff-Substitute for the opinion of the Court should be answered in the affirmative and this appeal allowed with costs.

LORD SHAW—This appeal arises out of an arbitration under the Workmen's Compensation Act 1906. Sheriff-Substitute Shennan, an experienced arbitrator, sets forth the facts in the stated case and says—"In these circumstances I found that the deceased John Brown died from the effects of injuries by accident received by him on 26th June while in the course of his employment with the appellants, and awarded compensation."

In my opinion there is no ground for holding that the learned Sheriff had in any respect misdirected himself in law; and the view that his finding was contrary to, or in no reasonable sense in accordance with, the facts proved appears to me to be equally unfounded.

One pit shaft in this mine was blocked by an admitted accident; a dislocation of the working arrangements ensued; the men had to be sent by another shaft under circumstances which exposed them to severe chill; this chill in one unfortunate workman's case brought on pneumonia, and of that the workman died. It appears to me both legally and philosophically incorrect to say that this should not be treated as a chain of causation—with the accident at the one end as cause, and death at the other end as effect. Wherever a chain of causation is alleged to exist it is possible to say that it is broken at a certain point, and to attribute the effect to a fresh and intervening factor. The Sheriff, as the judge of the facts did not find that the chain of causation was broken in this way. And I see no ground for saying that he erred.

I am accordingly of opinion that the judgment of the Second Division which recalled the arbitrator's finding and award should be reversed.

It would be unnecessary to say more but for certain considerations, to which, out of respect for the learned Judges of the Second Division, it appears to me proper to allude. In the first place, the judgments distinguish the present case from a decision by Seven Judges of the Court of Session in Scotland (Lord Salvesen dissenting) in the case of *Drylie* v. *Alloa Coal Company*. In that case by an accumulation of water in a mine (caused by a breakdown in the pumps) the workmen were forced to stand knee deep in water; one of the men was in consequence seized with pneumonia, and he died. The Act was held to apply and an award of compensation was made. I think that this was right and that the judgment was sound.

Had it been necessary I should for myself have said that the principle of the present case was concluded by that applied in *Drylie*. The cold element in the one case was water and in the other air. But, as Lord Salvesen indicates very clearly, there does not appear to be any other real ground of distinction between the two cases. In this I respectfully agree. Indeed, I do not entirely understand why that learned Judge, accepting the *Drylie* decision and not distinguishing the two cases, did not tender his dissent from the present judgment. But the learned counsel for the respondents were within their rights in maintaining that the present judgment is unanimous.

Before passing from *Drylie* I desire to remark upon a passage in the judgment of Lord Dundas. That learned Judge is reported to have said—"The circumstance of *Drylie* finding himself immersed in icy-cold water was abnormal; it, in its turn, was, as matter of fact, due to an abnormal cause—the stoppage of the pump while men were at work in the pit; and if the pneumonia of which he died was in fact, caused by his immersion, I think the elements of an 'accident' are here present." I am aware that in the present case the views of Lord Dundas do not exactly equate with those just cited from that report. But these sentences do appear to me to give, if I may say so, such a clear statement of a chain of causation connecting the whole with the statutory provision that I should humbly have adopted them if *Drylie* had directly reached this House.

For the reasons given I think that the present case was ruled by the judgment in *Drylie*, and the departure in the present case from its principles—for I am humbly of opinion that the two cases cannot stand together—makes the present appeal of importance, and that particularly in regard to one point.

The point appears most clearly from the opinions of Lord Salvesen, and it is this—that countenance appears to be given to the view that the compensatory provisions of the statute cannot be invoked unless injury be caused by "physical impact." This is, at this time of day, a most serious, and in my humble opinion a most disturbing and erroneous proposition. I think Mr Moncrieff in his able address and citation of authority was right so to treat it.

Lord Salvesen elaborately argues and illustrates the point in *Drylie*. It is fair to the learned Judge to say that he indicates that in his view the pneumonia which supervened to the workman may have not been causally attributable to the accidental exposure but merely to neglect. But while this is so the learned Judge does appear to give some countenance to the idea that physical impact, or indeed direct lesion, is required in order to enable compensation to be given. He observes, for instance—"The only case decided in the House of Lords so far as I am aware where a death from disease not preceded by some direct lesion was held to be a death resulting from injury by accident is the well-known anthrax case." And in another passage he says—"In all such cases if we are to affirm the judgment of the Sheriff-Substitute it will be open for the arbitrator to find, if he were bold enough to attribute the disease to a particular exposure resulting from some accidental occurrence, that it was the result of accident within the meaning of the Act."

I pass by the form of the expression "if he were bold enough to find," and take the learned Judge to mean "if he found as a

fact that" the disease arose from exposure, &c.

It must be observed that the statute itself in no way limits the causal connection between accident and disease to cases of physical impact, nor does it treat the connection itself as anything extraordinary. In the section dealing with industrial diseases it provides that "nothing in this section shall affect the rights of a workman to recover compensation in respect of a disease to which this section does not apply if the disease is a personal injury by accident within the meaning of this Act."

In the second place, such a restriction, excluding all cases however serious—say of shock and the like—unless physical impact or lesion had occurred, has in my opinion no justification in the state of the authorities. The one case cited in its favour is *The Victorian Railway Commissioners* v. *Coultas*, (13 A.C. 222). The case was decided by the Privy Council, and it is observable that the judgment of the Board was in form merely on the point of remoteness of damage. "Their Lordships are of opinion that the first question whether damages are too remote should be answered in the affirmative, and on that ground and without saying that impact is necessary the judgment should have been for the defendants." But there undoubtedly are observations by Sir Richard Couch of a more definite character. For instance, the learned Judge, deprecating the extension of liability, does say—"In every case where an accident caused by negligence had given a person a serious nervous shock there might be a claim for damages on account of mental injury;" and he observes on the chance of a wide field for imaginary claims. In the present case and in *Drylie* one may discern traces of similar views.

But in England, in Scotland, and in Ireland alike the authority of *The Victorian Railway Commissioners* v. *Coultas* has been questioned, and, to speak quite frankly, has been denied. I am humbly of opinion that the case can no longer be treated as a decision of guiding authority.

The subject was, if I may say so, examined with much erudition and care by the Lords Justices in *Dulieu* v. *White & Sons* ([1901] 2 K.B. 669), and the *Victorian* case was held not binding. I may be permitted respectfully to agree with the judgment of Lord Justice Kennedy in his observations thereon. It may be added that these were in line with certain dicta of Lord Esher on the same topic in *Pugh* v. *London, Brighton, and South Coast Railway* ([1896] 2 Q.B. 248).

In Scotland that very learned Judge Lord Stormonth Darling, in *Cooper* v. *Caledonian Railway* (June 14, 1902, 4 F. 880, 39 S.L.R. 660), stated broadly and emphatically that the *Victorian Railway* case was no part of the law of Scotland. Probably, however, no better analysis of it has been made than by Pallas, C.B., in the Irish case of *Bell* v. *Great Northern Railway of Ireland* (26 Irish L.R. 428), and I desire to tender my respectful adhesion to and approval of that judgment. I should add that other cases were cited showing it to be fully established by authority—recent and strong authority—that physical impact or lesion is not a necessary element in the case of recovery of damage in ordinary cases of tort.

On principle, the distinction between cases of physical impact or lesion being necessary as a ground of liability for damage caused seems to have nothing in its favour—always on the footing that the causal connection between the injury and the occurrence is established. If compensation is to be recovered under the statute or at common law in respect of an occurrence which has caused dislocation of a limb, on what principle can it be denied if the same occurrence has caused unhinging of the mind? The personal injury in the latter case may be infinitely graver than in the former, and to what avail—in the incidence of justice or the principle of law—is it to say that there is a distinction between things physical and mental? This is the broadest difference of all, and it carries with it no principle of legal distinction. Indeed it may be suggested that the proposition that injury so produced to the mind is unaccompanied by physical affection or change might itself be met by modern physiology or pathology with instant challenge.

The other case, of which the present is an example, is much narrower—a case of injury to the body—a physical injury, but a physical injury not caused by physical impact. On the point of the principle of liability what is there to distinguish the case of a man who is drowned in a scuttled boat from that of another who is immersed and sustains a chill resulting in his death? Make the difference still narrower—as narrow, for instance, as between this case and *Drylie*. The fatal pneumonia of one man is produced by his standing in cold water, and of a second by his standing in cold air. How the particular element which was the medium through which the producing cause operated towards the fatal result should have any legal effect in altering either the range or the canon of liability does not appear to my mind.

The truth is that the difference between all such cases is not one of principle. It is one of the things which becomes more noteable as a point of difficulty in the practice of the law on the matter of proof. But wherever the causal connection between occurrence and result be established the principle to be applied is, as it ought to be, the same. The difficulty of establishing the causal connection may be, of course, much greater in the one case than in the other, and Courts of Law are justified in demanding in all cases, and especially where external signs are wanting, that the relation of cause and effect be sufficiently established. If, however, it be established, then the liability in my humble judgment follows.

I am of opinion that the appeal should be allowed with costs.

LORD PARMOOR—This is an appeal against the decision of the Second Division of the Court of Session in Scotland upon a case stated in an arbitration under the Workmen's Compensation Act 1906. The arbitrator found that John Brown died from the

effects of injuries by accident received by him on June 26, 1911, while in the employ of the respondents, and awarded compensation to the appellant.

The material facts are that between eight and nine o'clock on the morning of the 26th June 1911 all the men in the pit where Brown was working were ordered to ascend to the surface in consequence of a wreck in the shaft. On the way they were met by an official who told them to proceed by the communication road to the shaft of No. 1 Pit. They had to wait at a mid-landing for about an hour-and-a-half until the men from the lower seam, who usually ascended by this shaft, had been raised. At the mid-landing, during the period of waiting, a strong current of air blew in on Brown and his fellow miners. When the men reached the surface Brown complained of feeling cold, and died from pneumonia due to the chill incurred while waiting at the mid-landing. Under these circumstances the arbitrator awarded compensation to the appellant, but the Judges in the Second Division of the Court of Session in Scotland found that such award was not within the competency of the arbitrator.

It was not denied by counsel for the appellant that in order successfully to maintain a claim for compensation under the Workmen's Compensation Act 1906 there must be an accident in the ordinary popular meaning of that term, and an injury attributable to such accident. The accident relied upon is the wreckage of the shaft, and the injury the chill from which Brown took pneumonia and died. The answer of the respondents is that the wreckage of the shaft should be considered merely as an historical incident in the narrative of the case, and as too remote a factor to which to attribute the injury, and that in any case the injury cannot fairly be attributed to the wreckage of the shaft.

I cannot assent to this argument on behalf of the respondents. The delay in the landing where the chill was caught appears to me to be clearly attributable to the wreckage of the shaft, and but for such wreckage would not have occurred. The incidents are closely connected, and cannot be treated as independent and detached factors. On the other hand, it is not questioned that the delay on the landing in a draught did cause the injury which resulted in Brown's death. There are both the necessary elements to maintain a claim—a definite accident and injury fairly attributable thereto. It is not material that the wreckage of the shaft did not result in physical impact causing physical injury, or that no one could have foreseen the delay on the landing and the subsequent chill as a probable or natural result of the wreckage of the shaft. Such considerations do not arise in a claim under the Workmen's Compensation Act. The workman under the Act is as much entitled to compensation if death results from exposure consequent on and attributable to an accident as he would be if death had resulted from immediate physical injury.

A number of authorities were quoted by the counsel for the appellant. It is only necessary to refer to two of them. The case of the *Victorian Railway Commissioners* v. *Coultas* was quoted as an authority for the doctrine that in ordinary accident cases some form of physical impact is a necessary element to found a claim for damage. The case does not appear to support this contention, nor do I think that any such contention could be supported. The following passage occurs in the judgment — "Their Lordships are of opinion that the first question, whether damages are too remote, should be answered in the affirmative, and on that ground, and without saying that impact is necessary, the judgment should have been for the defendants."

The second case is the *Alloa Coal Company* v. *Drylie*. I am unable to distinguish this case from the present case. It cannot be material for the purpose of a claim under the Workmen's Compensation Act whether the chill resulted from exposure to a current of air or to cold water, so long as the exposure is attributable to the accident and has caused the injury on which the claim to compensation is founded.

In my opinion the appeal should be allowed, and the question of law stated by the arbitrator for the opinion of the Court should be answered in the affirmative.

Their Lordships, with expenses, reversed the interlocutor appealed against, and restored the award of the arbiter.

Counsel for the Appellant—A. Moncrieff, K.C. — Keith. Agents — Hay, Cassels, & Frame, Writers, Hamilton — Simpson & Marwick, W.S., Edinburgh — Deacon & Company, London.

Counsel for the Respondents—The Lord Advocate (Munro, K.C.)—Harold Beveridge. Agents—W. T. Craig, Writer, Glasgow—W. & J. Burness, W.S., Edinburgh — Beveridge, Greig, & Company, Westminster.

Tuesday, April 28.

(Before Lord Dunedin, Lord Kinnear, Lord Atkinson, Lord Shaw, and Lord Parmoor.)

SMITH *v.* FIFE COAL COMPANY, LIMITED.

(In the Court of Session, February 21, 1913, 50 S.L.R. 455, 1913 S.C. 662.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58)—*Accident—"Arising Out of and in the Course of the Employment"—Mine.*

Under statutory rules a shot in a mine should have been fired in the following way:—The miner's duty was to insert and stem the detonator which was given to him by a duly appointed official called the shot-firer. The shot-firer's duty it then was to attach the end of the cable to the detonator, thereafter to couple up the other end of the cable, which had to be at least 20 yards in length, with