the opposite is the case. Nor, again, is the relief which your Lordships propose to give that for which the appellants asked, nor even that which the judge of first instance gave. Finally, the ground upon which your Lordships are to proceed does not represent any grievance felt by the appellants or known to the respondents until the writ was prepared; it was at once removed by the statement of defence; and it is not in truth or substance the question between the parties. In the tentative operations which constituted the trading of the appellants in this country the one thing which they regarded as essential in the description of their corsets was the phrase "erect form." At first the full title was "W.B. erect form corset." Driven out of this by a rival whose initials were also "W.B." they adopted the title "America's leading corset. Erect form corset." But the gist of their case has all along been to claim the description "erect form" as their own. This claim is bad in law for reasons which I do not elaborate, as they are common ground with your Lordships, but they have been borne in upon the appellants only in the course of this suit. But, such as it is, this has been the sole ground of complaint against the respondents, as against the other traders whom they have sued, until the acumen of counsel fished up from the sea of advertisements this scroll which is now the sole surviving part of the case. Now, in a passing-off case it is, of course, not necessary to prove intention to deceive or actual deception; but the absence of both (as in the present case) is highly important. Still more important is the fact that till the writ, and in all the correspondence down to the issue of the writ, there is no hint that the scroll was in fact calculated to deceive. And this is the more important because, such as it is, the scroll was patent and palpable to the appellants. Nor, in the absence of facts, is the attempt to conjure up imaginary deceived customers very successful, when in point of fact every one of the respondents' corsets has C.B., and nothing else, staring the purchaser in the face when she first sees them and every time she puts them on. Indeed, the same obtrusive frankness in revealing the identity of C.B. is to be observed in the scroll itself, on which C.B. is again as prominent as anything else. As I have said, however, when once objection was taken the respondents promptly withdrew the scroll; and, for my part, I put the incident to their credit. What is proposed now is to make the scroll the ground of judgment against the respondents, with costs. In this I cannot concur. I do not think that it is the duty of courts of equity, and still less of this House, to be astute in discovering unfelt grievances and administering one remedy when another is sought and for a different wrong.

LORD LINDLEY—If it were not for the scroll the plaintiffs, who are appellants, would have had no cause of action. But the defendants cannot, in my opinion, justify their conduct in copying the scroll; and although they ceased to use it, its use gave the plaintiffs a cause of action, and this has not been put an end to. Its importance may have been magnified, but it cannot be ignored; and for the reasons given by Romer, L.J., in the Court of Appeal, and by Lord Macnaghten, whose judgment I have read and am content to adopt, I am of opinion that this appeal should be allowed with costs.

Order appealed from reversed and injunction granted.

Counsel for the Appellants—Neville, K.C. —Sebastian—Noad. Agent—C. Urquhart Fisher, Solicitor.

Counsel for the Respondents—Moulton, K.C. — Astbury, K.C. — Younger, K.C. — Kerby. Agents—Reed & Reed, Solicitors.

HOUSE OF LORDS.

Friday, April 14.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, Robertson, and Lindley.)

BRINTONS LIMITED *v.* TURVEY.

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

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1—*Injury by Accident—Disease of Anthrax Contracted in Course of Employment.*

Held (*diss.* Lord Robertson) that a workman, who in the course of his employment as a woolsorter contracted anthrax from infected wool, had sustained "personal injury by accident arising out of and in the course of his employment," within the meaning of section 1 of the Workmen's Compensation Act 1897.

The question in this case was whether a workman who contracted the disease called anthrax while employed in a wool-combing factory in which there was wool taken from sheep that had suffered from anthrax and infected with the bacillus of that disease, was injured by an accident arising out of and in the course of his employment within the meaning of section 1 of the Workmen's Compensation Act 1897.

The County Court Judge found that he had met with accidental injury and awarded compensation. His judgment was sustained by the Court of Appeal (COLLINS, M.R., MATHEW, and COZENS-HARDY, L.J.J.).

The County Court Judge found the following facts proved—"I find as a fact that the anthrax which was the immediate cause of death was caused by the accidental alighting of a bacillus from the infected wool on a part of the deceased person which afforded a harbour in which it could multiply and grow, and so cause malignant

disease and consequent death . . . I think it immaterial whether there was in fact any external pimple or abrasion, because if there was it was a fortuitous accident that the bacillus alighted on that particular spot. But I find as a fact that there was no such abrasion or pimple." . . .

At delivering judgment—

LORD CHANCELLOR (HALSBURY)—I am not able to deny the cogency of the reasoning of my noble friend Lord Robertson when he contests that this House is precluded by its decision in *Fenton* v. *Thorley & Company* (89 L.T. Rep. 314, (1903) A.C. 443). I do not think that the point which now stands for decision was either argued in that case or was upon the facts open for decision. Nevertheless, I am of opinion that the judgment now under appeal is right. One proposition which to my mind goes far to solve the question under debate appears to have been accepted by all the judicial minds which have been directed to the subject, and that is that the language of the statute which we are called upon to construe must be interpreted in its ordinary and popular meaning. The use of language preceded scientific investigation. Probably it is true to say that in the strictest sense, and dealing with the region of physical nature, there is no such thing as an accident. The smallest particle of dust swept by a storm is where it is by the operation of physical causes, and if you knew them beforehand you could predict with absolute certainty that it would alight where it did. But when the Act now under consideration enacted that if in any employment to which the Act applied personal injury "by accident" arising out of and in the course of his employment is caused to a workman his employers shall pay compensation, I think that it meant that apart from negligence of any sort—either of employers or employed—the industry itself should be taxed with an obligation to indemnify the sufferer for what was "an accident" causing damage. I do not stop to discuss the provisions which disentitle a sufferer, because they are not relevant to the question now under debate. I so far agree with my noble friend that I think that in popular phraseology, from which we are to seek our guidance, it excludes, and was intended to exclude, idiopathic disease. But then, if some part of our physical frame is in any way injured 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 a disease. Suppose in this case a tack or some poisoned substance had cut the skin and set up tetanus. Tetanus is a disease, but would anybody contend that it was an accident causing damage? An injury to the head has been known to set up septic pneumonia, and many years ago I remember, when that accident had in fact occurred, that it was sought to excuse the person who inflicted the blow on the head from the consequences of his crime because his victim had died of pneumonia and not as was contended of the blow on the head. 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. Many illustrations of what I am insisting on might be given. A workman in the course of his employment spills some corrosive acid on his hands. The injury caused thereby sets up erysipelas—a definite disease. Some trifling injury by a needle sets up tetanus. Are these not within the Act because the immediate injury is not perceptible until it shows itself in some morbid change in the structure of the human body which when shown we call a disease? I cannot think so. I am therefore of opinion that the County Court judge was quite right.

LORD MACNAGHTEN—On the facts found by the learned County Court judge I am of opinion that the decision of the Court of Appeal was right. It is plain, I think, that the mischief which befell the workman in the present case was due to accident, or rather, I should say, to a chapter of accidents. It was an accident that the noxious thing that settled on the man's face happened to be present in the materials which he was engaged in sorting. It was an accident that this noxious thing escaped the down draught or suck of the fan which the Board of Trade, as we were told, requires to be in use while work is going on in such a factory as that where the man was employed. It was an accident that the thing struck the man on a delicate and tender spot in the corner of his eye. It must have been through some accident that the poison found entrance into the man's system, for the judge finds that there was no abrasion about the eye, while the medical evidence seems to be that without some abrasion infection is hardly possible. The result was anthrax, and the end came very speedily. 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 charactor 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. I have nothing more to add, because the meaning of the expression personal injury by accident, as used in the Act of 1897, was very fully considered in the case of *Fenton* v. *Thorley* (*ubi sup.*) in this House. I am content to abide by what I am reported to have said in that case. It had the express concurrence of Lord Shand and Lord Davey, and the approval I think of Lord Lindley. I agree that the appeal must be dismissed with costs.

LORD ROBERTSON—This man died of anthrax, having become infected in his eye from the wool at which he was working.

It is clear that the man's being attacked by anthrax arose "out of and in the course of his employment," and the question is—Was his catching anthrax an "accident" in the sense of the Act of 1897? The language in which the County Court judge describes the "accident" puts the case in the most favourable way possible for the theory of the respondent, for he speaks of "the accidental alighting of a bacillus from the infected wool on" the man's eye. But, while scientifically accurate, this vivid presentment as of a concrete, although occult, incident must not blind us to the fact that any other case of disease falling within the wide scope of bacteriology might with equal accuracy be traced to the occurrence of a similar "accident." Anthrax is a disease; and unless the contracting of infectious disease (if it arises out of and in the course of the employment) is "accident" in the sense of the Act, I do not see how this judgment can stand. If it does stand, then in every case in which a man dies of any infectious disease (his taking which arose out of and in the course of his employment), all he has got to do is to get the doctor to prove (what could not be disputed) that a bacillus did it, and the accident is there. (It may be rash to say that a similar process of illustration and reasoning might not extend the application to non-infectious disease besides; but I wish to confine the argument to what is clear.) And I must add that the illustrations given by one of my noble friends of tetanus, pneumonia, or erysipelas ensuing on accidents differ from the present case in the one point essential to the controversy, for in the illustrations there is postulated an accident distinct from the disease, while in the case before your Lordships the "accident" so called is simply the inception of the disease. Now, it is necessary steadily to have in mind that the question is whether, in the sense of the Act of 1897, this man's catching anthrax was accident. It is nothing (or little) to the purpose to say that it was an accidental occurrence. Colloquially and accurately we say that So-and-So accidentally caught cold or any other disease, and yet no one would think of saying that he had met with an accident. It is not everything that happens accidentally that is an accident. Accordingly, when the learned County Court judge, in what is a very well expressed judgment, bases it on the fact that there was here "a fortuitous intrusion of a foreign substance into the eye," the word "fortuitous" does not convince me, and the rest is merely, once more, the graphic description of the occult initiation of disease. Did the Legislature then mean, *inter alia*, the catching of infectious disease when it spoke of "personal injury by accident"? I cannot bring myself to think so. The class of mishaps now proposed to be included is so wide and so heterogeneous to those dangers to life and limb which admittedly are included, that I do not believe that language so remote was intended to have this result. But then the question is a good deal clarified and brought up to the matter in hand by the argument of the learned counsel for the appellants. This establishment where the man became ill comes under the Workmen's Compensation Act as being a "factory" in the sense of the Factory Acts. Now, in the existing Factory Act of 1901, which is subsequent to that directly in question, and may therefore be referred to for a gloss or indication of the meaning of the Act of 1897, there are careful provisions about various diseases, and among them anthrax; and the medical officer is required to send, in the case of an outbreak of any of those diseases, certain notices, which are to be the same as in the case of "accidents." It is difficult to read this section 73 otherwise than as speaking on the assumption that an attack of anthrax is not an accident in the sense of such legislation. The respondent's main reliance was based on the recent case of *Fenton* v. *Thorley* (*ubi sup.*). Now, first of all, what are the facts of the case? They are of the very simplest possible. The man ruptured himself, or, in other words, broke a part of his body by over-exertion in his work. No one grasping this fact could possibly say that this was a disease, and therefore the question now before your Lordships was not raised. It is true that Lord Macnaghten used the expressions on which the Court of Appeal have founded. It seems to me that those expressions were *obiter dicta* only. My noble friend's judgment, besides being very able, is very long, and in discoursing of the section he was so enterprising as to hazard a definition. He was not thinking of disease, or at least that was not the matter in hand and is not referred to in his or in any other judgment; but I shall assume that it turns out that the words used are so wide as to cover disease. Now, I must respectfully protest against this house being held bound by dicta, and above all by the most dangerous of all dicta—viz., definitions—except in so far as they relate to or are involved in the matter then in hand. I hold myself free on the present occasion to consider on its merits the question now raised, and I should think it much to be regretted if this House were precluded from doing so by observations made when the question of disease had not been considered. On the merits, and for the reasons which I have stated, I think that these judgments ought to be reversed.

LORD LINDLEY—I hope that the decision in this case will not be regarded as involving the doctrine that all diseases caught by a workman in the course of his employment are to be regarded as accidents within the meaning of the Workmen's Compensation Act. That is very far from being my view of the Act, and I concur with the observations made by Cozens-Hardy, L.J., on this point at the end of his judgment. 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. The fact that an accident causes injury in the shape of disease does not render the cause not an accident,

Whether in any particular case an injury in the shape of disease is caused by an accident or by some other cause depends on the circumstances of that case and on the meaning to be attributed to the word "accident." The meaning of the word as used in the Workmen's Compensation Act was settled by this house in *Fenton* v. *Thorley* (*ubi sup.*), and having regard to that authority, and to the facts of this case as stated by the learned County Court Judge, his decision, and the decision of the Court of Appeal, were, in my opinion, quite right, and this appeal ought to be dismissed.

Judgment appealed from affirmed, and appeal dismissed.

Counsel for Appellants—Ruegg, K.C.—A. Parsons. Agents—Helder, Roberts, & Company, Solicitors.

Counsel for Respondent—J. S. Pritchett—H. Norton. Agents—Robbins, Billing, & Company, Solicitors.

HOUSE OF LORDS.

Friday, April 14.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, James of Hereford, and Lindley.)

HOULDER LINE, LIMITED *v.* GRIFFIN.

(On Appeal from the Court of Appeal in England.)

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *secs.* 1 *and* 7—*Seaman Injured while Doing Ordinary Work on Vessel Moored to Buoys in Dock.*

A seaman was accidentally injured while engaged in his ordinary work as a sailor on board his ship. At the time she had completed coaling and was lying in the middle of the dock basin moored to buoys and waiting to proceed to sea on the following day.

Held (*diss.* Lord James of Hereford) that the employment in which the injured man was engaged was not one to which the Workmen's Compensation Act applied.

The applicant for compensation was the widow of E. L. Griffin, deceased, who was a seaman.

He met his death in the following circumstances:—In November 1902 he signed articles at Liverpool to serve on board a vessel belonging to the appellants, the Houlder Line, Limited, as an able seaman, upon a voyage from Liverpool to the River Plate and back to this country. He joined the ship and sailed in her to Newport, Monmouthshire, where the vessel called to take in coal for the voyage. The vessel took her coal on board at the Alexandra Dock, Newport, and having filled her bunkers, was moved out to the buoys in the docks preparatory to proceeding to sea. While she was at a buoy in the dock, and while the deceased was engaged in clearing up one of her holds, a heavy piece of wood was knocked over by a fellow-servant of the deceased, and inflicted upon him injuries which resulted in his death.

The County Court Judge refused compensation. The Court of Appeal (Collins, M.R., and Cozens-Hardy, L.J., Mathew, L.J., dissenting) reversed his decision.

At delivering judgment—

Lord Chancellor (Halsbury)—An accident causing death happened to a sailor on board his ship while he was engaged in his ordinary work as a sailor, and the shipowner is sought to be made liable as an "undertaker" because the ship was afloat in a dock waiting to go to sea. The employment of a sailor is not one of the employments to which the Act applies, but it is argued that because the injured man was on board a ship which was floating in a dock the shipowner was the occupier of a dock, and as such was undertaker within section 7 of the Workmen's Compensation Act. I do not think that the shipowner was in any intelligible sense the occupier of the dock because his vessel was in the water surrounded by the structure of the dock. Although the extraordinary jumble whereby a ship becomes a factory and becomes a dock because it is a factory, and so the shipowner becomes an undertaker, seems to me to be a *reductio ad absurdum*, it appears to have prevailed, and induced the Court of Appeal to reverse the judgment of the County Court Judge. I cannot agree with that judgment. I entirely agree with Mathew, L.J., who dissented. It appears to me that the Court was misled by the case of *Raine* v. *Jobson* (85 L. T. Rep. 141; (1901) A.C. 404), but in that case the persons sought to be made responsible and held to be responsible were persons who had hired the dock for the purpose of repairing a vessel, and whether there was a vessel in it or not, they were liable if a workman met with an accident in that dock while engaged in working there. The Court there proceeded upon the assumption that the then defendants were in the use and occupation of a dock which they had hired, and the fact that there was the wooden structure of a ship in it being repaired did not prevent the application of the section which made the occupiers of a dock the occupiers of a factory within the meaning of the Act. If in that case the then defendants had the actual use and occupation of the dock, as they clearly had, it was impossible to deny that they were "the undertakers." This is a totally different case, and does not come within the meaning of that decision. I move your Lordships that the judgment be reversed and the decision of the County Court Judge restored.

Lord Macnaghten—The question in this case is whether, under the Workmen's Compensation Act 1897 an employer is