ualty Co. v. *Headers, supra,* in which this question has been considered. It is settled law in other jurisdictions, however, that, in the absence of any policy provision on the subject, an injury inflicted upon the insured by a third person, designedly and intentionally so far as the actor is concerned, is an accident as to him and authorizes a recovery under an accident policy, *Travelers' Ins. Co.* v. *Wyness,* 107 Ga. 584 (3), 589, 34 S.E. 113 (1899); *American Accident Co.* v. *Carson,* 99 Ky. 441, 36 S.W. 169, 34 L.R.A. 301, 59 Am. St. Rep. 473 (1896); *Newsome* v. *Travelers' Ins. Co. of Hartford, Conn.,* 143 Ga. 785, 85 S.E. 1035 (1915); *General Accident, Fire and Life Assur. Corporation* v. *Hymes,* 77 Okla. 20, 185 Pac. 1085 (1919); 14 R.C.L. 1260; 22 Ohio Jur. 661.

This concept must be distinguished from a situation in which the injury has been the result of the intentional act of the person claiming under the accident policy. In that situation it is settled law that the injury is not the result of an accident. *New Amsterdam Casualty Co.* v. *Johnson,* 91 Ohio St. 155, L.R.A. 1916B 1018, 110 N.E. 475 (1914).

It should also be noted that if the injury intentionally inflicted by a third party has been the result of some act of provocation on the part of the insured he is precluded from recovery under an accident policy. *Hutton* v. *States Accident Ins. Co.,* 267 Ill. 267, 108 N.E. 296, L.R.A. 1915E (1915); *Prudential Casualty Co.* v. *Curry,* 10 Ala. App. 642, 65 So. 852 (1914).

In view of the body of law contrary to the principal case and the rather dubious basis on which it was predicated, it is difficult to believe that the instant case represents the settled law of Ohio on this important point. It would seem more likely that if the question should be carried to the court of last resort, it would be decided in conformity with the settled law of other states, viz., that an accident insurance policy covers a situation in which the insured is injured as a result of the intentional act of a third party. From this it would follow that an insurance company would be held liable under a liability policy for injuries to a guest occasioned by the wilful or wanton misconduct of the driver.

GEORGE BAILEY.

LIABILITY OF AN EMPLOYER FOR THE NEGLIGENCE OF AN INDEPENDENT CONTRACTOR

Defendant corporation owned a clothing store in front of which, and overhanging the sidewalk, was an electric sign. The defendant contracted with the Power Co. to keep the sign in repair. The obliga-

tions of the contract were later assumed by the Edison Co., and the latter hired a Sign Co. to paint the sign. In the course of that work an employee of the Sign Co. permitted a bucket of paint to fall on the plaintiff. Plaintiff's petition charged defendant with negligence in that it knew repairs were being made on the sign and failed to give any warning thereof to pedestrians or station any guards to divert the course of pedestrians from under such sign. Defendant entered a general denial and at the trial claimed exemption from liability on the ground that the negligence, if any was shown, was that of an independent contractor. Plaintiff argued, and the court held, that the case came within an exception to the general rule of non-liability for the negligence of one engaged as an independent contractor. *Richman Brothers Co.* v. *Miller*, 131 Ohio St. 424, 3 N.E. (2d) 359, 6 Ohio Op. 114, 9 Ohio Bar 16, July 13, 1936.

This case, as far as the Ohio law is concerned, adds a new exception to the general rule of non-liability for the negligence of an independent contractor. Probably the court did not realize that it was taking another step forward because the case was decided on the basis of broad general statements in the syllabi of previous decisions. English courts, however, have gone much farther—to the point where exceptions have very nearly swallowed up the rule. Leading writers on the law of torts believe that sound social policy calls for still further inroads upon the rule of non-liability. Harper, The Law of Torts, p. 646; Restatement of the Law of Torts, Tentative Draft No. 6, Explanatory Notes by the Reporter, Francis H. Bohlen, p. 59.

One of the earliest Ohio cases in this field was *Clark* v. *Fry*, 8 Ohio St. 358 (1858). In that case the employer let the entire work of constructing a building to an independent contractor. It was held that the employer was not liable to a person who was injured when he fell into an excavation negligently left unguarded by the independent contractor. In succeeding cases the doctrine of this case has been strictly limited to the facts upon which it was announced. Thus where the independent contractor dug a ditch entirely across a street, the employer was held liable to one who fell into the ditch and was injured. *Railroad Co.* v. *Morey*, 47 Ohio St. 207, 24 N.E. 269, 7 L.R.A. 701 (1890). The decision went upon the ground that the injury was one that might have been anticipated as a direct or probable consequence of the performance of the work if reasonable care was omitted. Similarly, where the employer himself dug a hole in the sidewalk and turned over to an independent contractor the work of building vaults and walls, the employer was liable for the negligence of the contractor in leaving the hole unguarded. *Hawver* v. *Whalen*, 49 Ohio St. 69, 29 N.E. 1049,

14 L.R.A. 828 (1892). Where a city is under a statutory duty to keep its streets in reasonably safe condition, it is liable for the negligence of an independent contractor in leaving an excavation unguarded. *Circleville* v. *Neuding*, 41 Ohio St. 465 (1885).

Another leading Ohio case is *Covington & Cincinnati Bridge Co.* v. *Steinbrock & Patrick*, 61 Ohio St. 215, 55 N.E. 618, 76 Am. St. Rep. 375 (1899). There a brick wall was left standing in a dangerous condition after a fire. The employer was held liable for the negligence of an independent contractor who was hired to take down the wall and failed to adopt a reasonably safe method. Minshall, J. discussed a great number of English cases and quoted from *Penny* v. *Wimbledon Urban Council*, 2 L.R.Q.B. 212, 217 (1898): "where a person employs a contractor to do work in a place where the public are in the habit of passing, which work will, unless precautions are taken, cause danger to the public, an obligation is thrown upon the person who orders the work to be done to see that the necessary precautions are taken." He thought that the principle applied directly to the case he was deciding. This quotation, with the substitution of "reasonable precautions" for "the necessary precautions," is paragraph No. 2 of the syllabus of the principal case. A dictum by Minshall, J. on page 230 of the Covington Bridge case, is interesting: "It (the negligence) was not collateral to the employment, as would have been the case had a servant of the contractor, while at work, negligently let fall a brick upon a person in passing by." The distinction between Minshall's hypothetical case and the principal case is not readily apparent. Quite possibly Minshall would have found the negligent dropping of the paint bucket collateral to the employment. Or, if we say that the negligence consisted in the failure to rope off the sidewalk, it must also have been negligence not to keep the public at a safe distance from the wall on which the work was being done in the hypothetical case. The quotation from the English case, however, is broad enough to cover either situation, and it seems likely in view of the language used in the principal case that the court would hold the employer liable for collateral negligence as well as for negligence intimately connected with the work to be done. At page 432 in the principal case the court said: "Defendants owed to the plaintiff and the public while in the use of the sidewalk in front of their premises a duty and obligation to see that reasonable care was exercised for their protection from injury while the sign projecting over the sidewalk from their building was undergoing repair." The important fact seems to be that the work was being done in a public place.

Paragraph No. 1 of the syllabus in the Covington Bridge case, *supra*, is Paragraph No. 1 of the syllabus in the principal case, and it also states

the rule somewhat more broadly than most American cases would justify. It reads in part as follows: "Where danger to others is likely to attend the doing of a certain work, unless care is observed, the person having it to do is under a duty to see that it is done with reasonable care." In *Warden* v. *Pennsylvania R. R. Co.*, 123 Ohio St. 305, 175 N.E. 207 (1931), that syllabus was read to the jury, and they were told to decide whether or not the work was dangerous. The instruction was approved by the Supreme Court. The work being done was the construction of a temporary trestle over a busy street, and the negligence consisted in leaving a plank extending over the highway in such a position that the plaintiff ran into it and was injured. The language used above is similar to that in Section 297 of the Restatement: "One who employs an independent contractor to do work which is inherently dangerous to others is subject to liability for bodily harm caused to them by the contractor's failure to exercise reasonable care to prevent harm resulting from the dangerous character of the work." The comment and the explanatory notes, however, make it rather clear that the section applies only to ultra-hazardous work or work involving the use of ultra-hazardous instrumentalities, such as blasting, the use of fire in clearing land, and the tearing down of high walls.

Unless we can say that the work of painting the sign was inherently dangerous, it is submitted that none of the propositions stated in the Restatement of the Law of Torts is broad enough to impose liability in the principal case. Indeed, the negligence in the principal case would probably be classed as collateral negligence. See comments and illustrations in Sections 296 and 297. But the Reporter was careful to explain that the American Law Institute did not intend to discourage further extensions of liability. Tentative Draft No. 6, page 59.

D. M. POSTLEWAITE.

PERSONAL PROPERTY

RIGHT OF FINDER AS AGAINST THIRD PERSON

Plaintiff, as an employee of the Toledo Trust Co. operated an electric door from a cage, admitting identified safety deposit customers, employees who worked in the offices in the rear and on the second floor, and visitors. In July, 1920, plaintiff found an unmarked envelope containing five hundred dollars on the floor of the small lobby adjacent to her cage. She reported it to the vice-president of the bank, who placed the money in a special account. Upon a demand for the money and a refusal, plaintiff sued in July, 1933. It was held that the judg-