poses. What precise intention he had in his mind is of course not now susceptible of direct proof, and the Court must look at all the circumstances to see if they give rise to a reasonable and definite inference on the matter in question. If they give rise to conflicting inferences of equal degrees of probability, so that the choice between them is mere matter of conjecture, then the applicant has failed to prove her case. But is that shown to be the case here? On the one hand it is said that climbing from one truck into another is not, *prima facie*, a matter of pleasure, and was a manœuvre which if safely performed would have facilitated the next piece of work which he had to do or may probably have intended to do. On the other hand the appellants say, and it is of course possible, that the deceased may have been getting into the brake van merely in order to leave his proper duty and waste his time in the society of the brakesman. That, however, would have been a wrongful intention on his part, and as such it is not lightly to be presumed against him.

Where a workman is killed in the course of his employment while engaged in some act reasonably consistent with his master's service, I think that it requires some more definite evidence than the defendants can suggest in this case in order to found the inference that he was moved by a wrongful intention. In these circumstances I think that the inference drawn by the County Court Judge was the only inference properly open to him, and that this appeal fails.

Appeal dismissed.

Counsel for Appellants—Rigby Swift—G. C. Rees. Agent—W. Pingree Ellen, Solicitor.

Counsel for Respondents — Stewart Brown—Alfred Elias. Agent—H. Verdon Baines, Solicitor.

HOUSE OF LORDS.

Monday, October 30, 1911.

(Before the Lord Chancellor (Loreburn), Lords Atkinson, Shaw, and Mersey.)

BROWN *v.* TURNER, BRIGHTMAN, & COMPANY.

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

Ship — Charter-Party — Time-Charter — Exceptions—Strikes.

A time-charter of a ship contained the following exceptions—"The owners and charterers shall be mutually absolved from liability in carrying out this contract in so far as they may be hindered or prevented by . . . strikes." The charterers ordered the ship to the port of N. at a time when to their knowledge a strike was there in operation. Owing to the strike the ship could not obtain a cargo at N. Under the charter-party the charterers could have withdrawn the vessel from the area of the strike and traded with it elsewhere. The charterers refused to pay hire for the period of the ship's stay at N.

Held that the charterers were not protected by the exception, and were bound to pay the hire.

In an arbitration between the charterers and owners of a ship the arbitrator found the facts proved as stated *supra in rubric*, and decided in favour of the charterers, subject to the opinion of the Court. Judgment by Bray, J., in the charterers' favour was reversed by the Court of Appeal (COZENS-HARDY, M.R., FLETCHER MOULTON and FARWELL, L.JJ.).

At the conclusion of the argument for the appellants their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I agree with the conclusion at which the Court of Appeal has arrived.

The question is a very short one. It turns upon the construction of a clause in this charter-party — whether the charterers were prevented from carrying out this contract by a strike. If by carrying out the contract is meant merely performing the obligation due from the charterers to the owner or the owner to the charterers, then it is quite clear that the strike did not prevent the charterers from doing what they were bound to do, viz., paying the hire of the ship. If upon that clause it can be said that the charterers were prevented from carrying out this contract because they were prevented from enjoying the rights bestowed upon them, then equally I think that the strike has not prevented that. They used all their rights all the time. They took the ship to the port; they chose to keep her there, but the only misfortune was that they could not get a cargo. It was no part of the obligation of the owners to see that they got a cargo. To my mind the real meaning of this clause is that placed upon it by the Court of Appeal. Even if it were not so I do not think that the appellants could succeed, for the reasons which I have stated.

LORD ATKINSON—I concur.

LORD SHAW—In this case the arbitrator found that there were other trades in which vessels might be employed within the limits of the charter which would not have been interfered with by any strike. That has been put in purposely by the arbitrator in order to have some effect given to it. When I look to the contract I observe, as is usual in such cases, that the charterers have a right to direct the movements of the vessel. In sending this vessel at a certain date they knew that they were sending it within the area of the strike. Under the charter-party it was clear that they had the power of withdrawing it from the area and placing it elsewhere, and according to the finding of the arbitrator they could have done so, so that the vessel might

have been employed in carrying cargo during that period. They, however, exercised the option of retaining the vessel within the area of the strike.

Under those circumstances I do not see my way to differ from the view reached by the Court of Appeal on the construction of this clause. The same result is reached by the fact that the charterers have themselves to blame for the results which have followed, and they cannot rely upon this clause.

LORD MERSEY concurred.

Appeal dismissed.

Counsel for Appellants—Atkin, K.C.—Leck. Agent—J. Wicking Neal, Solicitor.

Counsel for Respondents—M. Hill, K.C.—AdairRoche. Agents—Botterell&Roche, Solicitors.

HOUSE OF LORDS.

Friday, November 3, 1911.

(Before the Lord Chancellor (Loreburn), Lords Atkinson, Gorell, and Shaw of Dunfermline.)

E. CLEMENS HORST COMPANY *v.* BIDDELL BROTHERS.

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

Sale—C.i.f. Contract—Terms Net Cash—Payment Due—Delivery—Tender of Shipping Documents—Sale of Goods Act 1893 (56 *and* 57 *Vict. c.* 71), *secs.* 28 *and* 34.

A contract for the sale of hops of specified quality provided that they should be shipped by the sellers from San Francisco to Sunderland, and paid for by the purchasers by weight c.i.f. "terms net cash." The purchasers declined to pay the price until after arrival at the port of destination and opportunity for examining the goods.

Held that the sellers in a c.i.f. contract were entitled to payment of the price upon tender of the bill of lading and insurance policy.

In a c.i.f. contract for the sale of goods to be shipped from San Francisco to Sunderland the purchasers declined to pay the price until after arrival and opportunity for inspecting the goods. The sellers accordingly declined to ship the goods, and the purchasers sought damages for breach of contract. Judgment in favour of the sellers was pronounced by Hamilton, J., and reversed by the Court of Appeal (VAUGHAN-WILLIAMS and FARWELL, L.JJ., *diss.* KENNEDY, L.J.)

The sellers appealed.

At the conclusion of the arguments their Lordships gave judgment as follows—

LORD CHANCELLOR (LOREBURN)—In this case there has been a remarkable divergence of judicial opinion. Hamilton J., and Kennedy, L.J., holding one view, and Vaughan-Williams and Farwell, L.JJ., another. The contract, no doubt, is one of a special and peculiar kind, as might be inferred from the difference of opinion to which I have referred. For my part I think it reasonably clear that this appeal ought to be allowed. The admirable and remarkable judgment of Kennedy, LJ., illuminating, as it does, the whole field of controversy, relieves me from the necessity of saying much upon the subject.

This contract is what is known as a cost, insurance and freight, or c.i.f. contract, and under it the buyer was to pay cash. But when? The contract does not say. The respondents say on the physical delivery and acceptance of the goods when they have come to England. Section 28 of the Sale of Goods Act 1893 says in effect that, unless otherwise agreed, payment must be made on delivery—that is, on giving possession of the goods. It does not say what is meant by delivery. Accordingly we have to supply from the general law the answer to that question. The question is, when is there delivery of goods on board ship? That may be quite different from delivery of goods on shore. The answer is that delivery of the bill of lading when goods are at sea may be treated as delivery of the goods themselves. That is so old and so well established that it is unnecessary to refer to authorities on the subject.

In my judgment it is wrong to say upon this contract that the vendor must defer tendering the bill of lading until the ship has arrived in this country, and still more wrong to say that he must wait until the goods are landed and examination made by the buyer. Upon the counterclaim I am of opinion that the Court of Appeal were right. The result will be that Hamilton, J.'s, order will be restored as to the claim, and that as to the counterclaim there must be judgment for the defendants, with 1s. damages, without costs.

LORDS ATKINSON, GORELL, and SHAW concurred.

Judgment appealed from reversed.

Counsel for Appellants—Atkins, K.C.—F. D. Mackinnon. Agents — Parker, Garrett, & Company, Solicitors.

Counsel for Respondents — Shearman, K.C.—Eustace Hills. Agents—Nicholson, Graham, & Jones, Solicitors.
