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.

HOUSE OF LORDS.

Friday, November 10, 1911.

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

WARNER *v.* COUCHMAN.

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

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—*Accident Arising out of the Employment—Frost-bite—Finding in Fact.*

A workman was employed by a baker to drive a horse and cart to deliver bread to customers. He sustained injury to a hand by frost-bite in severe winter weather. The County Court Judge found in fact (1) that there was nothing in the nature of the workman's employment which exposed him to more than the ordinary risk of cold to which any person working in the open was exposed at the same time; and (2) that assuming there was an "accident," it was not an accident arising out of the employment.

Held that the finding of the County Court Judge could not be set aside.

A workman received injuries by frost-bite in the course of his employment under the circumstances stated *supra in rubric.*

He sought compensation from his employer. The County Court Judge decided in favour of the employer, and this was affirmed by the Court of Appeal (COZENS-HARDY, M.R., and FARWELL, L.J., *diss.* FLETCHER MOULTON).

The workman appealed.

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

LORD CHANCELLOR (LOREBURN)—These cases are difficult enough, and we are sometimes apt to forget that what is decided in the County Court is much more a question of fact than a question of law, and if it is a question of fact then it is for the County Court Judge to decide it.

There cannot be imagined a part of this difficult Act more difficult to determine upon than that which relates to what are injuries by accident arising out of and in the course of a man's employment. In the present case the only question decided in the Court of Appeal was that they would not disturb the finding of the learned County Court Judge upon the question whether this injury by accident arose out of the employment.

I think that Fletcher Moulton, L.J., who was the judge in the minority in the Court of Appeal, stated the law fairly enough, or rather stated what was the point of view from which a judge ought to approach cases of this kind. He said—"It is true that when we deal with the effect of natural causes affecting a considerable area, such as severe weather, we are entitled and bound to consider whether the accident arose out of the employment or was merely a consequence of the severity of the weather to which all persons in the locality, whether so employed or not, were equally liable. If it is the latter, it does not arise out of the employment, because the man is not specially affected by the severity of the weather by reason of his employment."

When I turn to what the learned County Court Judge says, it may be possible, indeed it is possible, by a process of ingenious verbal criticism to apply the same kind of canon to these words as used in the old days to be applied by special demurrer to the pleading of either the plaintiff or the defendant. In substance the learned County Court Judge seems to me to have found that in this case the man was not specially affected by the severity of the weather by reason of his employment. It is quite unnecessary to scan with minuteness every phrase which he used, but in substance I think that this was what he decided. If so, I see nothing in the evidence which disentitled him to find that fact, and being so found as a fact, it is binding.

I will only say this further—to be perfectly strict and accurate it is somewhat lax to speak of this statute as though it referred to "an accident." I am quite conscious that I myself, as well as others, have fallen into that *lapsus linguæ*, but at times it may be apt to confuse one's idea of what is enacted in this particular Act of Parliament. The Act of Parliament does not speak of "an accident"; it speaks of injury "by accident" arising out of and in the course of the employment. Therefore I shall move your Lordships to dismiss this appeal.

LORD ATKINSON—I concur.

LORD SHAW—The findings of the learned County Court Judge are really two in number. First, negatively, he has found that this unfortunate man was not injured by accident arising out of his employment. Secondly, positively, he has found that being set to ordinary outdoor work he was injured by the severity of the weather. Both these findings are findings of facts, and I do not think that it is the province of a Court of Appeal to disturb such findings. I agree in the course proposed.

LORD MERSEY—I agree.

Appeal dismissed.

Counsel for Appellant — Atkin, K.C.—Graham Mould. Agents—Langham, Son, & Douglas, Solicitors.

Counsel for Respondent — Hemmerde, K.C.—W. A. Willis. Agents—Griffith & Gardiner, Solicitors.