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.

HOUSE OF LORDS.

Monday, December 4, 1911.

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

HANAU *v.* EHRLICH.

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

Statute—Interpretation—Settled Construction—Question Reopened in House of Lords—Statute of Frauds 1676 (29 *Car. II, cap.* 3), *sec.* 4.

Where doubtful words in a statute have for a long period been decided in a particular sense, the House of Lords, although not bound by decision, will not disturb that interpretation, following the brocard *Interest reipublicæ ut sit finis litium.*

The Statute of Frauds, 1676 (29 Car. II, cap. 3), sec. 4, provides that "no action shall be brought whereby . . . to charge any person . . . upon any agreement that is not to be performed within the space of one year from the making thereof," unless the agreement . . . or some memorandum or note thereof shall be in writing and signed. . . ."

The plaintiff Hanau raised an action for damages for breach of contract. He averred a verbal contract entered into by the defendant Ehrlich to employ him as a managing director for a period of two years subject to six months' notice on either side. The defendant pleaded the Statute of Frauds.

It was well-settled law that, if a contract can by possibility be performed within the year the statute does not apply — *Peter* v. *Compton*, 1694, Skinner 353; *M'Gregor* v. *M'Gregor*, 1888, 21 Q.B.D. 424. It was, however, established by a long series of decisions, none of which had been considered by the House of Lords, that a contract is not taken out of the operation of the Statute of Frauds although by its terms it may be defeated or put an end to within the year.

Judgment for the defendant by Lawrence, J., was affirmed by the Court of Appeal (VAUGHAN-WILLIAMS, FLETCHER, MOULTON and BUCKLEY, L.JJ.)

The plaintiff appealed.

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

LORD CHANCELLOR (LOREBURN) — The question here is one of the construction to be placed upon the Statute of Frauds, which, after the lapse of 200 years and more, seems still to be open to some question.

Mr Atkin, on behalf of the appellant, quoted authorities to show that the words of the Act deal only with agreements which cannot be performed by either party within a year. On the other hand, there is a chain of authorities since 1829, either approving or reaffirming the earlier decisions upon which the Court of Appeal relied, which undoubtedly support in a direct way the conclusion at which they have arrived. I think that these two series of decisions can both be reconciled, or rather, I ought to say, can both be applied by regarding the one as an exception to the other.

If you are to look at the words of this statute without any previous guidance at all, to my mind either construction is possible as a matter of language and pure interpretation of the meaning of language. But I agree with Vaughan-Williams, L.J., that it is not right, even for this House, to re-open points of construction upon ambiguous language which have been settled for a long period of years; and I advise your Lordships to decide this case upon that ground. To my mind, when doubtful words in a statute have for a long period been decided in a particular sense, we ought not to re-open the matter if we can help it. The doctrine *Interest reipublicæ ut sit finis litium* ought in such a case to apply.

LORD ALVERSTONE — I entirely agree with the motion made by the Lord Chancellor.

It seems to me that it is quite impossible in the present day to deal with this statute as though we were considering it for the first time. It has been said that the view taken by tbe Court of Appeal, which your Lordships are prepared to indorse, is not logical, having regard to certain exceptions founded upon *Peter* v. *Compton* (1694, Skinner 353). One has had to think over this point a good many times in the course of one's legal career, and it seems to me, and it has always seemed to me, that the two things can stand together. I put it in this way—The one class of cases says that if there is no mention of time, and the time is uncertain, the agreement is not within the statute. The other class of cases decides that if the time mentioned is more than one year, but there is power to determine, it is within the statute. I have never been able to see why that is not a perfectly good working construction for this statute.

But I entirely concur with the main reason given by the Lord Chancellor for refusing this appeal. This point was in terms decided in the year 1856, and decided with reference to this very identical contract—a contract of service for a certain number of years determinable on six months' notice—(*Dobson* v. *Collis*, 1856, 1 H. & N. 81).

I am sure that I am not exaggerating when I say that hundreds and thousands of such contracts have been made since, and that whenever they come before the courts, although they have not gone beyond Nisi Prius, the ruling has been that they are required to be in writing; and it would be, I think, a very serious thing for your Lordships to upset the course of decision when, as it seems to me, without inconsistency the two classes of