

judgment, in which he reviews the previous cases, Fletcher Moulton, L.J., negated the principle of law for which the appellant contended—"That where partial incapacity has been caused by an accident the employers are bound to show not only that the workman is capable of doing other work, but that he is able to obtain it, and that otherwise he is entitled to an award as for total incapacity." The judgment is not binding on us, but has the weight which attaches to the considered opinions of two such eminent Judges as Fletcher Moulton and Buckley, L.J.J. I have no difficulty in agreeing with the result at which they arrived. My only doubt is as to whether the Court of Appeal had not gone too far in the earlier cases. In my opinion incapacity for the purposes of the Workmen's Compensation Act is primarily physical incapacity, in which may well be included such personal disfigurement as may lessen the sphere of employment although the power to work remains as good as before. It does not, in my opinion, include inability to get employment which arises from something not personal to the workman. If it were otherwise the injured workman would be in the position, until he had wholly recovered from the effects of an accident, of drawing half-pay until the employer either found him a job which he was willing to take or proved that such a job could be obtained if he chose to apply for it. For the purposes of this case, however, the two decisions which I have quoted support the arbitrator in diminishing the appellant's compensation without finding in fact that he was able to earn a specific weekly wage at any employment which he was able to perform; and accordingly I propose that we should answer the first question in the affirmative.

The second question raises no matter of general application. It was argued that the arbitrator was not entitled to take into consideration the minute of 27th December 1910, and as it must be assumed that he did so, that his award could not stand. When, however, attention is directed to what the arbitrator elsewhere says on the subject, I think the question may be regarded as academic. The arbitrator says that he regarded the minute as being merely a record of the statement made by the respondents' law agent at the diet of debate, that the offer of 31st May 1910 was still open, and that he left out of consideration the amount of wages therein stated to be applicable to the work offered. To this extent I think it is plain that the arbitrator was entitled to consider the minute, and that we ought to answer the second question accordingly.

The third question is perhaps not happily stated; but as I understand it the arbitrator asks us whether he was right in diminishing the appellant's compensation, having regard (1) to his finding in fact as to the appellant's capacity for work, and (2) to the offer by the respondents to give him light work. I entertain no doubt that he was right, although I must not be

understood as holding that the diminution of the compensation might not well have proceeded on the first finding alone. The moment it is established as matter of fact that total incapacity has ceased and that only partial incapacity is present, the employer has made out a *prima facie* case for having the award as for total incapacity diminished. Perhaps this may be rebutted by the workman proving that his partial incapacity affects his earning power just as seriously as total incapacity, but a special case would require to be made out on his behalf. The policy of the Act is to encourage workmen who have met with accidents to resume work of some kind as soon as they are fit for it; and this would in many cases be defeated if the workman could draw his half pay until the employer demonstrated either his complete recovery or in substance found him a new job suited to his then physical state. It must not be left out of view that the arbitrator here considered that the workman ought to have accepted the employment offered on 31st May, and that if he had done so his capacity at the date of the proof would have been to a great extent restored. I am therefore of opinion that the arbitrator here was amply justified in diminishing the weekly payments; and as the appropriate amount of the diminution cannot be reviewed in the case before us, we must sustain the judgment at which he has arrived.

LORD DUNDAS—I agree in the opinion which your Lordship has delivered, and I have nothing to add.

LORD GUTHRIE concurred.

The LORD JUSTICE-CLERK and LORD ARDWALL were absent.

The Court answered the first and third questions in the affirmative, and the second by finding that the arbitrator was entitled to take into consideration the minute lodged in process by the respondents to the extent that he did.

Counsel for Appellant—A. M. Mackay. Agents—St Clair Swanson & Manson, W.S.

Counsel for Respondents—Horne, K.C.—J. H. Henderson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Wednesday, June 14.

FIRST DIVISION.

[Sheriff Court at Glasgow.]

THE "ABOCHURCH" STEAMSHIP COMPANY, LIMITED v. STINNES.

Ship—Charter-Party—Lay-Days—Demurrage—Exceptions—Detention by Cranes or any Other Unavoidable Cause—Ejusdem generis.

A clause in a charter-party stipulating for demurrage excepted from the hours named for loading and discharging,

inter alia, “detention by cranes,” “or any other unavoidable cause.” In an action for demurrage at the instance of the shipowners against the charterers, held (1) that the failure of the ship to get a berth and cranes at the port of loading, owing to a congestion of other ships in the port, was not “detention by cranes” within the meaning of the exception, and (2) that the words “other unavoidable cause” must be construed *ejusdem generis* with the previous enumerated exception, which fell under the class of a breakdown in the arrangements, and did not cover failure to obtain a berth through congestion of ships.

The “Abchurch” Steamship Company, Ltd., 5 Fenchurch Street, London, owners of the s.s. “Abchurch,” of London, *pursuers*, brought an action in the Sheriff Court at Glasgow, against Hugo Stinnes, coal exporter, Glasgow, *defender*, for payment of £77, 8s., being demurrage which they alleged to be due to them in terms of a charter-party, dated 18th May 1909, at the rate of 16s. 8d. per hour during 3 days 20 hours 53 minutes, from 13th to 17th August 1909, during which time their vessel had been detained over her stipulated lay time in loading a cargo of coal at Methil.

The charter-party provided, *inter alia*—“That the said ship being tight . . . shall, with all convenient speed, sail and proceed to a loading-berth, as ordered by the freighter or agents at Grangemouth, Leith, Methil, or Burntisland Docks, as ordered before leaving last discharging port, and there load in the customary manner a full and complete cargo of coal, not exceeding what she can reasonably stow and carry over and above her tackle, apparel, provisions, and furniture . . . The cargo to be brought to and taken from alongside at merchant’s risk and expense, according to the custom of the ports. The vessel is to be loaded in 66 running hours (from 2 p.m. Saturdays to 6 a.m. Mondays, colliery and other holidays excepted unless used) . . . The time for loading is to commence from the first high water after arrival in Roads, and written notice of readiness, given in ordinary business hours. . . . Demurrage at the rate of 16s. 8d. per hour to be paid for all detention over the specified time for loading . . . accidents, holidays, strikes, lock-outs, or stoppages at the colliery or collieries with which ship is booked to load, or of frost, floods, riots, storms, detention by railway or cranes, stoppage of trains, accidents to machinery or any other unavoidable cause preventing the loading . . . of the cargo, excepted from hours named for loading.”

The defenders pleaded—“(1) The delay in respect of which the present claim for demurrage is made having arisen from a detention by cranes, and the same being an exception from the lay time expressly provided for by the charter-party between the parties, the defender is entitled to absolver. (2) The delay complained of being due to an unavoidable cause prevent-

ing the loading of the cargo, expressly provided for by the charter-party in question, the defender is entitled to absolver.”

The facts are given in the note of the Sheriff-Substitute (A. O. M. MACKENZIE), who on 23rd July 1910, after a proof, pronounced this interlocutor—“*Finds in fact* (1) that by charter-party the defender chartered the pursuers’ s.s. ‘Abchurch’ to carry a cargo of coal from Methil to Rouen; . . . (3) that the only method of loading at Methil Harbour is by cranes; (4) that the ‘Abchurch’ arrived at Methil Harbour on the morning of Tuesday, 10th August 1909, and the first high water after she arrived and gave notice of the readiness to load was at 9-27 a.m. on the same day, but owing to a congestion of traffic in the harbour she did not obtain a berth opposite a crane until 10-15 p.m. on Saturday, 14th August, and did not complete her loading and sail until 1-20 a.m. on 17th August; (5) that the detention of the ‘Abchurch’ beyond the hours named for loading in the charter-party was caused by her inability to obtain the use of a crane for loading, and could not have been avoided by the defender: *Finds in law*, in these circumstances, that the detention of the ‘Abchurch’ was a detention by cranes in the sense of the charter-party, and that the defender is not liable to the pursuers in demurrage: Therefore assoilizes the defender from the conclusions of the petition.”

Note.—“The material facts of the case have now been clearly ascertained by admission and proof, and are as follows—The port at which the ‘Abchurch’ was required to load was Methil Harbour, in the county of Fife. The only method of loading at that port is by means of hydraulic hoists or cranes on the quay wall. Of these cranes there are six, and until a vessel is berthed opposite one of them her loading cannot proceed. By the authorised bye-laws, which have been confirmed by the Sheriff, ships are entitled to have a loading berth assigned to them according to the order in which they arrive and give notice of their readiness to load, but besides the authorised bye-laws there are certain private regulations of the railway company which owns the harbour, which are enforced by the harbour-master, and which provide that as regards two of the loading berths priority is to be given to ‘regular traders,’ and as regards the other four to ‘ordinary traders’—‘regular traders’ are steamers which trade regularly between Methil and certain specified ports; ‘ordinary traders’ are steamers which are not ‘regular traders.’ The ‘Abchurch’ was not a ‘regular trader.’ The regulations referred to were known to the defender and to the shipbrokers through whom the charter was negotiated on the pursuers’ behalf, and are generally well known to shipowners and coal exporters in both Scotland and England. The ‘Abchurch’ arrived at Methil on the morning of Tuesday, 10th August 1909. The first high water after her arrival was 9-27 a.m. of that day. Before that time notice of her readiness to

load had duly been given. A loading berth opposite a crane was not assigned to her until 10.15 p.m. on Saturday 14th August. From the time of her arrival in the harbour until 12th August at 7.50 p.m. all the cranes were occupied by ships which had arrived before her, but at that hour a berth opposite a crane became vacant, and being one of the two at which a preference was given to ‘regular traders’ was assigned by the harbour-master to the ‘J. O. Scott,’ a ‘regular trader’ which had arrived at the harbour on the evening of 11th August. The defender’s agent did not remonstrate against the harbour-master giving this berth to the ‘J. O. Scott,’ but it is proved that remonstrances had been made against priority being given to ‘regular traders’ on previous occasions without effect. At the time when the ‘J. O. Scott’ was berthed for loading several ‘ordinary traders’ which had arrived before the ‘Abchurch’ were waiting their turn. There is no evidence to show whether or not the cargo of these boats was ready. The ‘Abchurch’ completed her loading and sailed on Tuesday 17th August at 1.20 a.m. Deducting the twenty-four hours from 12 midnight on Saturday the 14th to 12 midnight on Sunday the 15th, which were not used, the time actually occupied in loading the ‘Abchurch’ was twenty-seven hours five minutes, of which one hour was occupied in bunkering. The usual time occupied in loading a steamer of her size at Methil is about twenty-six hours. The whole time from the first high water after her arrival in harbour until she sailed was one hundred and fifty-nine hours fifty-three minutes.

“These being the material facts, the first question is whether the detention of the ‘Abchurch’ during the time when she was unable to obtain the use of a crane owing to all the loading berths being occupied by other vessels which had arrived before her was a detention by cranes in the sense of the clause of exceptions. In considering the relevancy of the defence I expressed the opinion that it was, but I was asked by the pursuers’ agent to reconsider the question in light of the fact above referred to that the average time required at Methil for the actual work of loading such a vessel as the ‘Abchurch’ is about twenty-six hours. It was suggested as a fair inference that the margin of forty hours allowed by the charter-party had been intended to provide for detention which might be caused by the ship being unable to obtain a loading berth. I have willingly reconsidered the question, as the words to be construed are unusual and their construction by no means free from difficulty, but I am unable to draw the suggested inference, as it seems to me that the margin allowed by the charter-party over and above the time actually required for loading may equally well have been intended to provide for detention due to delay on the part of the collieries supplying the cargo to send it forward, and upon reconsideration I have failed to find any sufficient reason for altering the opinion I previously

expressed on the construction of the charter-party. Two things are certain. Some meaning must be given to the words which will not deprive them of all effect, and they cannot be construed according to their plain and literal meaning without denying their effect, because a crane can never detain a ship by its direct action. The question really comes to be whether their meaning is limited to delay caused by the break-down of a crane of which the ship might have obtained the use, or whether they cover delay caused by the ship not being able to obtain a berth opposite a crane and so not being able to obtain the use of a crane for loading. I think that the latter interpretation more probably accords with the true intention of the parties.

“The only other question is whether, upon the assumption that the construction I have put upon the words of the charter-party is correct, the detention of the ‘Abchurch’ ceased to be an unavoidable detention by cranes in the sense of the charter-party when the berth became vacant which was assigned to the ‘J. O. Scott.’ In point of pecuniary value this question is not of much importance, as, if it were to be answered in the affirmative, the pursuers would only, according to their own calculation, be entitled to £1, 17s. 6d. of demurrage; but in my opinion it falls to be answered in the negative. The pursuers argued that in making their contract the parties must have contemplated that the authorised bye-laws would be adhered to, and could not have contemplated consequences arising from the enforcement of the unauthorised regulations. I cannot agree. I think that the parties must be held to have contracted with reference to the actual practice with regard to loading prevailing and well known to prevail at the port; and it is, I think, sufficiently proved that the defender could not have done anything to prevent the ‘J. O. Scott’ being berthed before the ‘Abchurch.’

“For these reasons I am of opinion that the pursuers’ claim for demurrage fails.”

The pursuers appealed to the Court of Session, and argued—This was not “detention by cranes,” because (1) it was failure to obtain a berth, and (2) even if this were not so, it could not be “detention by cranes” if the parties never got cranes at all. If failure to obtain a berth was to excuse the defender it would be natural to look for it expressly in the charter-party and not by implication. This was the case in *Lilley & Company v. Stevenson & Company*, January 19, 1895, 22 R. 278, 32 S.L.R. 212. In such cases the risk was with the shipowner till a berth was obtained. But the present case belonged to the class of which *Horsley Line Limited v. Roechling Brothers*, 1908 S.C. 866, 45 S.L.R. 691, was typical, where the lay-days began from the arrival of the vessel in the roads, and in such cases the risk of finding a berth was with the charterer. “Detention by cranes” meant detention through the breakdown of cranes or detention attributable to the cranes. Nor did

the words “any other unavoidable cause” protect the charterer, because these words must be construed *ejusdem generis* with those which immediately preceded—*Thorman v. Dowgate Steamship Company, Limited*, [1910] 1 K.B. 410. The exception must be something accidental or abnormal and different from delay caused by a crowded harbour—*per* Lord Macnaghten, *ibid.*, p. 423; *in re Richardson v. M. Samuel & Company*, [1897] 1 Q.B. 261; *Thames and Mersey Marine Insurance Company v. Hamilton, Fraser, & Company*, 1887, 12 App. Cas. 484. If it had been intended to exclude the *ejusdem generis* construction and to include every sort of hindrance, it would have been easy to use words to that effect—*Larsen v. Sylvester & Company*, [1908] A.C. 295.

Argued for the respondents—Delay had been caused by a specifically provided-for exception, viz., failure to obtain cranes. No ship was ever directly detained by cranes, just as no ship was ever directly detained by railways—*Letricheux & David v. Dunlop & Company*, December 1, 1891, 19 R. 209, 29 S.L.R. 182. There it was laid down that “detention by railways” covered failure to supply trucks. Detention by cranes meant, therefore, detention connected with cranes. The exception “accidents to machinery” covered the breaking down of cranes. A clause of this nature was not common in charter parties, and it must be presumed to have been drawn with a view to the particular custom of this port, the only method of unloading at Methil being to get a vessel into a berth opposite a crane—*Postlethwaite v. Freeland*, 1880, 5 App. Cas. 599, *per* Lord Blackburn, p. 613. In any event the charterer was protected by the words “any other unavoidable cause.” In recent cases it had been laid down that the *ejusdem generis* principle could not be applied so as to limit the universality of the words unless all the enumerated cases fall into the same genus—*S.S. “Knutsoford” Limited v. Tillmans & Company*, [1908] A.C. 406; *Thames and Mersey Marine Insurance Company v. Hamilton, Fraser, & Company (cit. sup.)*. The case of *Larsen v. Sylvester & Company (cit. sup.)* showed that if the enumerated cases did not fall into one genus the general words could not be limited. The only genus to which the exception here could be assigned was any cause beyond the control of the charterers, and this particular cause fell within that genus.

At advising—

LORD PRESIDENT—In terms of a charter-party entered into between Messrs France, Fenwick, & Company, who were ship-owners, and Hugo Stinnes, the defender, a steamer called the “Abchurch,” belonging to the pursuers, was chartered to go to a Firth of Forth port, the named port being Methil, and there to load a cargo of coal, which was afterwards to be taken to Rouen. The charter-party goes on to say—“The cargo to be brought to and taken from alongside at merchant’s risk

and expense according to the custom of the ports. The vessel is to be loaded in 66 running hours (from 2 p.m. Saturdays to 6 a.m. Mondays, colliery and other holidays excepted unless used). . . . The time for loading is to commence from the first high-water after arrival in roads, and written notice of readiness given in ordinary business hours.” And then the rate of demurrage is given—“16s. 8d. per hour to be paid for all detention over the specified time for loading and discharging, accidents, holidays, strikes, lock-outs, or stoppages at the colliery or collieries with which ship is booked to load, or of frost, floods, riots, storms, detention by railways or cranes, stoppage of trains, accidents to machinery, or any other unavoidable cause preventing the loading . . . excepted from hours named for loading and discharging.”

Now what happened was that the ship went to Methil, and duly notified her arrival as provided under the charter-party. But at Methil there are only a certain number of berths, and it is impossible to load without being in a berth, because it is not possible to load at Methil without the service of a crane and the cranes are at the berths. The result was that a delay was caused in loading over and above the stipulated number of hours allowed by the charter-party, and the present action is for demurrage at the agreed-on rate.

The learned Sheriff-Substitute has assoilzied the defenders upon the ground that the incident falls within the exception of detention by cranes.

I am unable to agree with the learned Sheriff-Substitute’s decision. I think the general rule of law is quite well settled and is nowhere better stated than by Lord Selborne in the House of Lords in the case of *Postlethwaite v. Freeland*, 5 A.C. 599. He is there speaking of discharge—but, of course, in this matter there was no real difference between discharge and loading—and he says—“If by the terms of the charter-party he (that is, the charterer) has agreed to discharge it within a fixed period of time, that is an absolute and unconditional engagement, for the non-performance of which he is answerable, whatever may be the nature of the impediments which prevent him from performing it, and which cause the ship to be detained in his service beyond the time stipulated.” And in the same way Lord Hatherley in the same case says—“The cases show that when a specific time is named, either in words or by necessary implication, the party who has contracted to unload a ship within the time must bear the loss occasioned by any excess of time, although the delay was not occasioned by any default on his part, for, as was said by Lord Tenterden in his work on shipping, ‘he has engaged that it shall be done.’”

Now that is the general rule, and I find here that, according to the charter, there is no question that the charterer, as to the time named for loading, “has engaged that it shall be done,” and he has taken for the running of the time a precise *terminus*

a quo, namely, when proper notice was given of the arrival in the Roads. That being so, it is for him to show clearly that the cause of delay falls within the exception. I think that it is straining the words to call the cause of delay here detention by cranes. I do not know that there is any better test than the use of ordinary language. If anyone connected with the matter had been asked what was it that delayed the ship in loading, the plain answer would have been—because she could not get a berth. And if the true intention of the contracting parties had been to throw the risk of not getting a berth—which I quite admit was a risk that was probably in view of both parties, because I think it must be taken that they knew the arrangements at Methil, and knew that it would be possible that there would be delay through not getting a berth—if it was meant to throw that risk upon the ship and not upon the charterer, what simpler than to have provided that the running of the lay time should commence, not from the notification of arrival in the roads, but from the ship getting to the berth? Well, that was not done, and accordingly I think it is quite clear that detention of cranes points to something quite different, namely, something connected with the crane itself. Of course, if you do not get a berth you do not get a crane. In that secondary sense only there was a detention by crane. I do not so read the clause. I therefore on this matter differ from the Sheriff-Substitute, and think very clearly that it does not fall within the exception.

I should not be doing justice to the argument which was presented to us if I did not notice the argument that "other unavoidable cause preventing the loading" covered the incident. I think it has been again and again said that such general words following words of specification are to be construed on what is called the *ejusdem generis* principle; and construing the words "other unavoidable cause" upon the *ejusdem generis* principle, I do not find that they would bring in the want of a berth, because I think all the things that are given before are things which point at what I may call some class of breakdown in arrangements, and do not go to such a thing as is really part of the ordinary routine of the port—that you will always be kept waiting if there are other people in front of you.

On the whole matter, I think this appeal ought to be allowed and decree given for the sum asked. I understand there is no dispute as to the precise sum.

LORD KINNEAR— I am of the same opinion. The learned Sheriff-Substitute, after quoting the clause in the charter-party on which this question depends, in his interlocutor goes on to find in fact "that the 'Abchurch' arrived at Methil Harbour on the morning of Tuesday, 10th August 1909, and the first high water after she arrived and gave notice of the readiness to load was at 9:27 a.m. on the same day,

but owing to a congestion of traffic in the harbour she did not obtain a berth opposite a crane until 10:15 p.m. on Saturday, 14th August." And having made that finding in fact, he goes on to find "that the detention of the 'Abchurch' beyond the hours named for loading in the charter-party was caused by her inability to obtain the use of a crane for loading, and could not have been avoided by the defender: Finds in law, in these circumstances, that the detention of the 'Abchurch' was a detention by cranes in the sense of the charter-party."

I am unable to agree with the learned Sheriff-Substitute, for the same reasons that your Lordship has explained. These clauses are sometimes difficult of interpretation because, although the parties to such contracts have perfectly distinct ideas before them of a great variety of events for which they intend to provide, they are not always able to use exact language in describing them. But we must read the language they use according to the ordinary natural sense of the words. And I do not think that anybody making a contract for the failure of a ship to obtain a berth owing to the congestion of traffic at a certain port would describe that contingency as a "detention by cranes." I think that the meaning which the learned Sheriff-Substitute has put upon these words is altogether forced and unreasonable.

The question remains whether it is a detention by some "other unavoidable cause" which prevented the loading, and if these words are to be construed in their literal and most comprehensive sense, of course it was. But then I think we must take it to be quite settled by a series of ruling decisions, in the first place, that the words may be restricted by reference to the subject-matter to which the contract relates, and, in the second place, that the general words may be restricted by the rule that they are to be construed as referring to causes *ejusdem generis* with the preceding enumerated causes. I think I am putting the two rules of construction in almost the language used by Lord Halsbury in the case of the *Thames and Mersey Marine Insurance Company v. Hamilton, Fraser, & Company*, 12 A.C. 484.

Now as to the first of these conditions, it is plain enough that the parties were contracting with reference to the conditions of a harbour which was known to them, and must have had in view the possibility of delay at Methil by the congestion of traffic, and if they make no specific provision for that delay it may be reasonably inferred that they intended it to be covered by the general provision under which the charterer undertakes to complete his loading within a certain specified time which, we must assume, allowed a sufficient margin in the opinion of the contracting parties to provide for probable delays.

As to the second ground for restriction of the general words, it was argued that the causes specifically enumerated are not

of one genus, and that therefore the rule cannot be applicable to the general words because we cannot find one common characteristic of the enumerated causes.

I do not think that is sound, because, in the first place, the general words must be subject to some restriction, because they are expressly brought into the clause to provide for exceptions and not for a general rule. And if they were to be interpreted in their most universal sense, the specific enumeration of exceptions would be futile and the general rule would be swept away—there would be no meaning in it. The clause, in that view of it, would have been properly framed by excepting all causes of detention except the fault or negligence of the charterer. I must say also that I concur with your Lordship in finding no great difficulty in discovering a common characteristic of all the enumerated causes which is not to be found in the actual cause of the delay—the congestion of traffic in the harbour—because, although there are a great variety of causes, they resemble one another in this, that they are all accidental causes arising from the state of the weather or from the breaking down of machinery or from strikes or lock-outs or stoppages of a colliery, all of which would obstruct the ordinary and lawful working of the harbour upon the assumption that the harbour is perfectly ready to receive the ship.

It seems to me that the actual cause was different from all these, and that it is within the general intention of the contract to put the risk of such unavoidable delay upon the charterer.

LORD MACKENZIE—I am of opinion that the appellants are entitled to succeed.

There are, as was pointed out, two classes of charter-party—in the first the lay-days are stipulated to begin from the time the ship obtains a berth; in the second the lay-days run from a point of time fixed independently of the ship obtaining a berth. In the first class of cases the risk of obtaining a berth is with the ship; in the second it is with the charterer. The present charter-party falls under the second class. It is provided that “the time for loading is to commence from the first high-water after arrival in roads, and written notice of readiness given in ordinary business hours”; and that “the vessel is to be loaded in sixty-six running hours.” These are the terms of the bargain, and according to them the charterer is responsible if the time is exceeded, although the delay was occasioned by no default on his part.

Unless, therefore, the charterer brings the case within one of the specified exceptions, or within the general exception of “other unavoidable cause,” liability attaches to him. I have come to be of opinion that detention by cranes cannot fairly be construed as meaning failure to obtain a berth. One would expect distinct language to displace what *prima facie* on a construction of this charter-party was an obligation of the charterer, viz., to obtain a berth. If

the charterer intended to protect himself from the consequences of failure to get a crane berth, I think it was for him to get the clause of exception clearly expressed.

I have less difficulty in rejecting the argument that the principle of *ejusdem generis* construction is not to be applied in construing the words “or other unavoidable cause,” and in holding that these words do not refer to what might occur in the normal working of the port.

I therefore concur with your Lordships.

LORD JOHNSTON was absent.

The Court recalled the interlocutor of the Sheriff-Substitute dated 23rd July 1910; found in fact in terms of the first, second, and fourth findings in fact in said interlocutor; found in law that in those circumstances the detention of the “Abchurch” was not a detention within the exceptions enumerated in the charter-party; and decreed against the defender for the sum sued for.

Counsel for Pursuers and Appellants—Aitken, K.C.—C. H. Brown. Agent—F. J. Martin, W.S.

Counsel for Defender and Respondent—Munro, K.C.—A. R. Brown. Agents—Cockburn & Meikle, W.S.

Friday, June 16.

SECOND DIVISION.

[Lord Skerrington, Ordinary.]

EARL OF CRAWFORD v. PATON.

Property—Exclusive Right and Use—Contract—Notes—Searcher—Public Records—Interdict—Confidentiality—Original Notes Made by Searcher Employed to Examine and Take Excerpts from Public Records.

A searcher of records who was employed to make searches in public records in order to obtain and furnish excerpts of all entries relating to persons of a certain name, made shorthand notes of the entries, and subsequently transcribed these notes and delivered these transcriptions to the person who employed him. In an action by the latter against the searcher for delivery of the shorthand notes and for interdict against communication of them to any person without the pursuer's permission, *held*, after a proof, (1) that the notes belonged to the defender, and (2) that no actual or apprehended injury to the pursuer being involved by any use the defender proposed to make of the notes, interdict ought not to be granted.

The Earl of Crawford, *pursuer*, raised an action against the Rev. Henry Paton, *defender*, concluding for (1) delivery of “all notes of excerpts from the volumes of Acts and Decrees of the Court of Session and the Register of Deeds of entries relating to