

not doubt that if a pursuer in his account of the accident tells such a story that he shows that according to his view the proximate cause of the accident was his own negligence—I do not doubt that in such circumstances the case cannot go on. But when I look at the averments here I cannot say that I think they disclose such a situation. I think the pursuer's averments quite clearly disclose this, that there may be proved against him a case of contributory negligence. But they do not seem to me to be tantamount to saying that he was guilty of contributory negligence. Accordingly I think the interlocutor must be recalled and an issue granted.

LORD JOHNSTON—As the case is presented upon the Sheriff-Substitute's interlocutor, I entirely agree with all that your Lordship has said, and I agree that the pursuer has made a sufficiently relevant statement of fault on the part of the defenders. But I confess that my own impression is that at the same time condescendence so clearly discloses, upon the statement of the pursuer himself, that he was guilty of contributory negligence, which was the proximate cause of the accident, that I think he ought to be non-suited on his own record, in respect that it would be improper to allow the case to go to proof upon an averment of fault where there is an admission of contributory negligence, which is an absolutely complete answer to that averment of fault. I cannot conceive that a miner who merely states that his lamp was extinguished, and that he continued to advance in face of a known danger, does anything else but disclose upon the record the unqualified admission that his own negligence or rashness was the proximate cause of his death.

LORD MACKENZIE—I agree with your Lordships that the pursuer here avers a relevant case at common law and under the Employers' Liability Act.

As to the point that his averments disclose a case of contributory negligence, one is very reluctant to deal with that until the facts have been fully ascertained, for the reason that only then can the complexion of the case be known. All I say is that I do not think that condescendence necessarily means that the pursuer was guilty of contributory negligence.

LORD KINNEAR was absent.

The Court recalled the interlocutor of the Sheriff-Substitute dated 31st October 1911, and remitted to him to proceed.

Counsel for the Pursuer and Appellant—Moncrieff. Agents—Simpson & Marwick, W.S.

Counsel for the Defenders and Respondents—Macmillan. Agents—R. & R. Denholm & Kerr, Solicitors.

Thursday, November 30.

FIRST DIVISION.

[Sheriff Court at Glasgow.

“ARDEN” STEAMSHIP COMPANY,
LIMITED v. WILLIAM MATHWIN
& SON.

Ship—Charter-Party—Demurrage—Exceptions—“Stoppages at Collieries”—“Accidents . . . which may Prevent or Delay the Loading.”

A charterparty allowed the freighters sixty running hours for loading the vessel. Time was not to count in the case of, *inter alia*, “delays through stoppages at collieries,” or “any accident or cause beyond control of the charterers which may prevent or delay the loading.” The vessel was delayed over the sixty hours because the collieries from whom the charterers had ordered the cargo, which was a small coal called “doubles” got by riddling the larger coal, did not find it convenient to bring up the coal from which “doubles” was procured, as the vessels to take the larger coal had not arrived.

Held that the delay was not covered by the clause of exceptions, because, where collieries for their own purposes did not choose to produce a particular class of coal, that was not a “stoppage” of the collieries, and because there was here no accident or cause preventing or delaying the loading, since the obligation to load must be distinguished from the absolute obligation to provide a cargo.

The “Arden” Steamship Company, Limited, 5 Fenchurch Street, London, owners of the s.s. “Arden,” *pursuers*, raised an action in the Sheriff Court at Glasgow against William Mathwin & Son, coal exporters, Glasgow, *defenders*. The claim or demand of the pursuers was—“For demurrage in terms of charter-party, of date 22nd October 1909, at the rate of 16s. 8d. per hour during 134 hours 53 minutes, from 12:22 a.m. on 29th October 1909 to 4:15 p.m. on 3rd November 1909, during which the defenders detained the vessel over her stipulated lay time in loading a cargo of coal at Methil.”

The charter-party provided, *inter alia*—“1. *Loading*.—That the said steamer being warranted tight, staunch, strong, and now in every way fitted and ready for the voyage, shall, with all possible despatch, sail and proceed to Methil Dock and there load in the customary manner, at the usual berth or berths, in one or more lots, a cargo of coals from such colliery or collieries as the charterers may direct (and the charterers are not bound to ship from any other colliery or collieries), not exceeding what she can reasonably stow and carry over and above her tackle, apparel, provisions, fire coal, and furniture; the freighters being allowed for loading the vessel 60 running hours, commencing from first high water after arrival in roads, and notice given accord-

ing to the customs of the port, but time in any case not to count between 2 p.m. Saturdays and 6 a.m. Mondays. Time not to count on any general holiday, colliery, national, local holiday or fete day, nor in case of pitmen or other hands striking work, or lock-outs, railway detention, or delays through stoppages at collieries with which steamer is booked to load, nor from riots, frost, or floods, or any accidents or cause beyond control of the charterers which may prevent or delay the loading, from date of this charter until the actual completion of loading. . . . 8. *Demurrage.*—Demurrage to be paid to the steamer at the rate of sixteen shillings and eightpence for every hour employed beyond the time allowed for loading and discharging, subject to the exceptions contained in this charter unless steamer already on demurrage.”

The facts of the case appear from the first sixteen findings in fact of the following interlocutor of the Sheriff-Substitute (FYFE) (which were repeated by the Inner House), dated 29th November 1910, and the note appended thereto—“Finds (1) that by charter-party dated 22nd October 1909 (No. 13 of process) the defenders chartered the pursuers’ steamship ‘Arden’ to load at Methil a cargo of coal for Rotterdam; (2) that under the charter the loading time was 60 running hours commencing from first high water after arriving in the roads and notice given according to the custom of the port; (3) that the exceptions in the charter-party included, *inter alia*, ‘delays from stoppages at colliery with which steamer is booked to load,’ and also included ‘any accident or cause beyond the control of the charterers which may prevent or delay the loading’; (4) that the vessel arrived in Methil roads at noon on 26th October 1909; (5) that notice was duly given as required by the charter-party; (6) that the first high water after the arrival in the roads and notice given was at 12:22 p.m. of the same day; (7) that on the arrival of the ‘Arden’ in the roads there were other ships with prior right to go into loading berth; (8) that according to the bye-laws regulating loading at Methil (No. 24 of process, article 8) steamers rank for loading in the order in which they are ready to take in cargo; (9) that the ‘Arden’ was a vessel taking a mixed cargo; (10) that according to the bye-laws (No. 24 of process, article 7) she was not entitled to a berth until the whole of her cargo was available; (11) that the ‘Arden’ came into dock about noon of 27th October to await a loading berth; (12) that a loading berth was available for her at 10 p.m. on 27th October; (13) that she did not get a berth because her coal cargo was not forward; (14) that the ‘Arden’ was berthed on 29th October at 9:45 a.m.; (15) that the loading was finished on 3rd November at 4:15 p.m. and the vessel sailed that day about 5 p.m.; (16) that the loading of the ‘Arden’ was interrupted and she was removed from the berth several times because her coal cargo was not available; (17) that the delay in

loading arose from causes beyond the charterers’ control and falling within the exceptions of the charter-party; (18) that giving effect to the said exceptions no demurrage is due: *Finds in law* that in respect the detention of the vessel beyond the stipulated loading time was owing to causes falling within the charter-party exceptions the defenders are not liable in demurrage: Therefore assolvies the defenders and finds them entitled to expenses.’

Note.—“The question in this case is, Was the very serious delay which occurred in loading this vessel attributable to causes falling within the exceptions of the charter-party?”

“The vessel was chartered to load ‘in the customary manner,’ and it appears that the customary manner at Methil is somewhat peculiar—one of the peculiarities being that Methil dock is worked along with the Burntisland dock, and as regards loading turn, vessels arriving in either dock are treated as having arrived at the same loading port. Another peculiarity is that certain vessels trading regularly from the port get a preference of loading berth; but from the proof I do not think that any part of the detention of the ‘Arden’ is attributable to this custom.

“One of the Methil dock bye-laws debars a steamer from obtaining a loading berth until her whole cargo has arrived, if she is taking a mixed cargo—as upon this occasion the ‘Arden’ was.

“The harbour authorities, however, do not construe this rule too strictly, and if, say, two-thirds of the cargo had come forward the ‘Arden’ would have got a berth. The only portion of her cargo in regard to which there was trouble was 1400 tons Cowdenbeath coal, which had to come from the pits of the Fife Coal Company. She carried also about 600 tons of Wemyss coal and 200 tons of Lochgelly, besides about 100 tons of Wellwood coal for bunkers, but with these the present action is not concerned, for these were sent forward in good time.

“According to the charter-party, the loading time begins at the first high water after arrival in the roads, that is to say, at 12:22 p.m. on 26th October. As the ‘Arden’ did not finish loading till 4:15 on 3rd November, the time between the commencement of the contract loading time and the finish of the loading appears to be 196 hours.

“It is agreed that one hour may be allowed for bunkering, reducing the time to 195 hours. Deducting the 60 hours allowed by the charter-party, the vessel was apparently delayed 135 hours on demurrage, and the question is how much of that detention of 135 hours was occasioned by causes falling within the charter exceptions.

“There was, in the first place, some delay by breakdown of the loading cranes. This extended to about fifteen hours, and the practice at Methil is to allocate that amongst the vessels at each of the six cranes. On this basis the ‘Arden’ would

be entitled to credit for two and a half hours.

"The vessel was kept out of a loading berth from 27th October at 10 p.m. till 29th October at 9:45 a.m. for the reason that her coal cargo from Cowdenbeath pits was not forward. She is entitled to credit for these 36 hours.

"Then the 'Arden' was three times put out of her berth because there was no coal forward for her, first from 6 p.m. on the 29th till 9:30 a.m. on the 30th, being 15½ hours; again from 3:20 p.m. on the 30th October till 11:30 p.m. on 1st November, being 56 hours; again from 8:30 a.m. on 2nd November till 11 a.m. on 3rd November, being 26½ hours, making in all of time she was put out of berth from want of cargo 98 hours.

"The whole question accordingly in this case is whether the time during which the vessel was waiting for a berth, and during which she was put out of berth, is to be held as excepted time. It is so excepted if the cause was colliery stoppage. It is a peculiarity in the present case that the vessel was not directly stemmed to any particular coal pit, but rather was stemmed to a loading centre for sixteen pits. What had been ordered for this vessel was 1400 tons of Cowdenbeath doubles. There are sixteen pits producing Cowdenbeath coal for the Fife Coal Company. When the coal comes up it is screened to various sizes—one class (which represents about 11 per cent. of the output) being known in the market as doubles. What happened was that certain vessels, which were to take coal from the Cowdenbeath pits, had not turned up in time, and the colliery people, being in the practice of preparing cargo as required for shipment as it emerged from the pits, had their preparation arrangements upset, and in consequence the output of coal restricted.

"The relationship of cause and effect between the fact that the output was so restricted, and the other fact that the 'Arden' was three times put out of her loading berth, is not very clearly made out, but upon the whole I think it is established. I confess I sympathise a good deal with the pursuers in this case being practically made a convenience of for purposes of economic colliery management at Cowdenbeath.

"It is obviously an economy and a convenience to the Fife Coal Company to stop the output from time to time in order to get their screening done comfortably; and it certainly looks like a hardship upon pursuers that their ship should have had to lie at Methil for a week to suit the convenience of the Fife Coal Company in working their Cowdenbeath pits. On the other hand, it is an equal hardship to the charterers that they should have to pay demurrage for delay which they could do nothing to prevent, and as they had accepted a charter-party with the extraordinary provision that the running hours for loading were to commence at the first high water after arrival in the roads, the charterers are

probably entitled to strictly insist upon their exceptions.

"Both parties took a risk under the charter, and the charterers were quite within their right in electing to have Cowdenbeath doubles as the cargo to be carried by the 'Arden.' It is perfectly clear upon the proof that the failure of the Colliery Company to send forward the coal was a matter altogether beyond the control of the charterers. It is argued that the delay which occurred was not colliery stoppage in the sense of the expressed exception of the charter-party, because that refers to the case of a steamer booked to load at a particular colliery, rather than, as in the present case, booked to load coal which might come from any one of sixteen pits. I am unable to read the charter-party in the narrow sense that the exception does not apply unless the vessel is stemmed to a particular coal pit.

"She was stemmed to load 1400 tons of the Cowdenbeath doubles, which are shipped at the port of Methil, and the charter may, I think, be reasonably read as meaning that the 'Arden' was, in the sense of the exception clause, booked to load at collieries where stoppages occurred.

"Even if I am wrong in this view, I think the exception clause still covers the detention, because even if there were not stoppages in the strict sense, there was derangement at the collieries which prevented the production of the Cowdenbeath doubles, that is to say, there was a cause beyond the charterers' control *ejusdem generis* with the exceptions set forth in the charter-party.

"I take it to be now settled that very special words must be used to give the expression 'causes beyond the charterers' control' an independent meaning, and the reason for this is obvious, because 99 out of every 100 causes which delay a vessel may be said to be beyond the charterers' control; and to sanction the interpretation which the defenders here seek to put upon these words would be to sanction the doctrine that, provided these words are in a charter-party, the shipowner accepts practically the whole risk of loading or discharging delays. Indeed, if these words 'causes beyond the charterers' control' are to receive the independent effect the defenders here contend for, there is no need at all for the enumeration of exceptions. It would be much simpler and quite as effective to say the ship to be loaded in so many hours, causes beyond the charterers' control excepted.

"The case relied upon by the defenders is in my opinion not in point—*Larson v. Sylvester & Company*, 1908 App. Cases, p. 295. In that case, indeed, the House of Lords expressly recognised the doctrine of *ejusdem generis*, and the decision turned upon a special element, which is not in the present case, viz., that the parties to the contract had gone out of their way to get round the *ejusdem generis* doctrine, and had expressly excepted 'hindrances of what kind so ever.'

"In the present case I am of opinion

that the words ‘causes beyond control of the charterers’ must be construed as referring to matters *ejusdem generis* with the enumerated exceptions—*Thorman v. Dowgate S.S. Company, Limited*, 1910, 1 K.B. 410.

“The question therefore is, Was the cause of delay an excepted cause?”

“For the reasons which I have explained, my opinion is that the delay is proved to have arisen from a cause beyond the charterers’ control, and that the cause was, if not strictly stoppages at collieries, at all events *ejusdem generis* with stoppages at collieries, and so covered by the exceptions of the charter-party.”

“It appears therefore that the time (135 hours) the vessel was apparently on demurrage is wiped out by the exceptions. In order to effect a settlement the defenders before coming into Court had offered the pursuers £48, 13s. 1d., and they tender that in the pleadings. But I do not think pursuers can now claim that amount or any amount, for they did not accept the tender, and defenders do not on record admit being due anything at all. In the view I take the tender has no effect at all. If pursuers had got decree for something under £48, it might have had the effect of making pursuers liable in expenses. But upon the result I have arrived at, which is in effect to sustain the defenders’ third plea-in-law, the pursuers are liable in expenses at any rate, and the tender need not be regarded.”

The pursuers appealed, and argued—The cause of delay did not fall within the excepted causes. “Stoppage at collieries” meant stoppages of an extraordinary character, and did not include cessations of production to suit the convenience of the colliery owners, nor did the phrase include a restricted output. The meaning of the phrase was made the clearer by the collocation of the other enumerated exceptions. “Any accident or cause beyond the control of the charterers” must be construed as referring to matters *ejusdem generis* with the immediately preceding words—*Thorman v. Dowgate Steamship Company, Limited*, [1910] 1 K.B. 410—and in any case the accident or cause must actually prevent or delay the loading. Here even if there could be said to be an accident or cause, it did not prevent or delay the loading but the providing of a cargo, and the obligation to load must be distinguished from the antecedent and absolute obligation to provide a cargo—*Gardiner v. Macfarlane, M’Crindell & Co.*, February 24, 1893, 20 R. 414, 30 S.L.R. 541; *Grant & Co. v. Coverdale, Todd, & Co.*, 1884, 9 App. Cas. 470; *Arden Steamship Company, Limited v. Weir & Co.*, August 4, 1905, 7 F. (H.L.) 126, 42 S.L.R. 851. [The LORD PRESIDENT referred to “*Knutsford*” *Limited v. Tillmans & Co.*, 1908 A.C. 406].

Argued for the defenders and respondents—They did not deny that the obligation to supply a cargo was absolute in the absence of qualification in the charter-party

(*Carver, Carriage by Sea*, 5th ed., section 252), and there might even be a presumption that the exception clause related only to the work of loading, but the clause might by inference apply to the getting of the cargo (*Carver, Carriage by Sea*, 5th ed., section 257a). The enumerated exceptions showed that the clause did so here. The collieries’ failure to produce this class of coal was a “stoppage at collieries.” If there was, in fact, a stoppage beyond the control of the charterers, it did not matter what the cause of the stoppage was—*Létricheux & David v. Dunlop & Company*, December 1, 1891, 19 R. 209, 29 S.L.R. 182; *Mein v. Ottoman*, December 11, 1903, 6 F. 276, 41 S.L.R. 144; *Turnbull, Scott & Co. v. Cruickshank & Co.*, December 15, 1904, 7 F. 265, 42 S.L.R. 207—provided the collieries’ non-production was the real cause of the coal not being forward—*Glasgow Navigation Company, Limited v. Iron Ore Company, Limited*, 1909 S.C. 1414, 46 S.L.R. 968. In any case the delay was covered by the general words “any accident or cause beyond the control of the charterers.” These general words should not be limited by the application of the doctrine of *ejusdem generis*; “any” was not accompanied by “other,” and was at least as wide as “any other” “of what kind so ever,” which was held in *Larsen v. Sylvester & Co.*, [1908] A.C. 295, to exclude the application of the doctrine.

At advising—

LORD PRESIDENT—In this case the defenders William Mathwin & Son, coal exporters in Glasgow, by charter-party dated 22nd October 1909, chartered a vessel to go to Burntisland or Methil, which two ports are run in conjunction, to take a cargo of coals. The clause of the charter with which we have to do is this—“The freighters being allowed for loading the vessel sixty running hours, commencing from first high-water after arrival in roads, and notice given according to the customs of the port, but time, in any case, not to count between 2 p.m. Saturdays and 6 a.m. Mondays. Time not to count on any general holiday, colliery, national, local holiday or fête day, nor in case of pitmen or other hands striking work, or lockouts, railway detention, or delays through stoppages at collieries with which steamer is booked to load, nor from riots, frost or floods, or any accidents or cause beyond control of the charterers which may prevent or delay the loading from date of this charter until the actual completion of loading.” And then there are some other allowances as to bunker coal and so on.

Now the ship arrived, and due intimation was made of its arrival, but it was kept waiting; it was in a berth, but it had to be taken out of the berth more than once, the cause of waiting being that the cargo was not ready.

The cargo of coals that the ship was meant to take was a cargo of what is known as “doubles,” and “doubles” is a small coal which is got by riddling the coal, the

larger coal being sold under another name. The reason that the cargo was not ready was that the set of eleven collieries, to which, through an agent in Glasgow, the order by the charterer had been given for a cargo, did not find it convenient to turn out at that moment quite enough "doubles" to complete the cargo of this vessel. They had taken the order, and if all things had gone in an ordinary way, as suited them, there would have been plenty of coal to supply the order; but some vessels which were intended to take the round (that is to say, the larger) coal did not arrive, and accordingly the collieries, for their own convenience and in order to avoid binging, refused to bring up more coal till they could get the round coal away, and consequently they were unable to produce enough "doubles" to complete the cargo of the "Arden."

It is not disputed that there was delay over and above the sixty running hours allowed by the charter, and the present action is for demurrage. The Sheriff-Substitute has assoiled the defenders upon the ground that they were excused under the clause I have just read to your Lordships.

I do not agree with the learned Sheriff-Substitute. Each of these cases must be taken upon its own clause, but I think it is amply settled that *prima facie* there is an absolute duty upon a charterer to provide a cargo, and if he fails in that duty he undoubtedly will have to pay demurrage. Doubtless the charter after all is a bargain, and the charter-party might be so framed as to give an excuse from this duty of providing a cargo. But if that is to be so, the excuse must be very clearly expressed in the charter, because, unless this is very clearly expressed, the duty is, as I have phrased it, an absolute duty.

When I come to the clause in question, the argument turned upon two points. First of all, it was said that the cause of delay here was a stoppage at the colliery. I do not think it was, because I think I am entitled to interpret the word "stoppage" according to what I conceive to be the ordinary meaning of the phrase when used colloquially or in an ordinary commercial document, and I do not think a colliery is said to be stopped when for its own purposes, and only for a few hours at a time, it does not choose to put out a certain class of coal. The colliery had not stopped. Stoppage in the ordinary sense implies something that compels the owners of the colliery to suspend his operations, such as general strike of the men who are working, or a breakdown of the machinery, or an inrush of water into the pit. All these things cause stoppage at a colliery, but I do not think a colliery is stopped when simply one or more of its pits are purposely kept idle because enough ships are not available to carry away one class of coal they produce.

The other portion of the clause which was founded on is "any accident or cause beyond the control of the charterers which may prevent or delay the loading." Now

I think the whole of this expression is governed by the concluding words, "which may prevent or delay the loading." I think it is amply settled by authority that loading is one thing and providing a cargo is another, and an accident which may prevent a cargo coming forward is not to be construed as an accident which delays the loading, although, of course, unless the cargo is forward the loading cannot go on. I think that distinction is most absolutely taken in the case of *Gardiner v. Macfarlane, M'Crindell, & Company*, 1893, 20 R. 414, in a very clear judgment of Lord Low's in this Court, and also in the case of *Grant & Company v. Coverdale, Todd, & Company*, 1884, 9 A.C. 470. The latter was a case where it was a question of frost delaying the loading, and the frost froze up the canals by which the coals were to arrive on the wharf; no coals came, and it was held that there was no delay in loading, the delay having been in the supplying of the cargo. I think the authorities are clear on this point, and therefore I do not think the charterer escapes under this clause of the charter-party. It seems to me here he took his risk. As matter of fact he did not make any contract by which he could be certain that the coals would come within the time he wanted them. I am not keeping out of view the fact that the representative of the Fife Coal Company stated that if he had been asked for a guarantee he would not have given one. That is his affair, and the charterers' affair. It seems to me that the charterer was under an absolute obligation to provide a cargo, and that he was not relieved of that obligation by the exceptions in the charter-party with regard to loading. If he was to have the benefit of that exception it should have been clearly stated in the charter-party that non-providing of a cargo was to be in the same position as delaying the loading. Upon the whole matter I think the Sheriff-Substitute's interlocutor must be recalled. I think we must refer to counsel as to amount for which decree must be pronounced, because that was not argued before us. If they can arrange that, well and good.

LORD JOHNSTON—I concur in holding that the Sheriff-Substitute is not well founded in his seventeenth finding in fact and in his consequent finding in law.

The undoubted rule of law is, as stated by Lord Blackburn, that "In the absence of something to qualify it, the undertaking of the merchant to furnish a cargo is absolute" (*Postlethwaite v. Freeland*, 5 A.C. 599, at p. 620). In the present case sixty hours were allowed for loading, but as cargo was not timeously furnished a much longer time was required. But there were qualifying words in the charter-party in question commencing with "Time not to count." Before examining these words and determining their effect, I think that it is necessary to advert to the fact that there are two possible occasions of delay in loading—first, the non-furnishing of cargo; and second, the tardiness of actual load-

ing. The qualifying clause provides for both these occasions, and it must not be run together as if the whole of it applied to either or both. The first limb of the sentence is, “Time not to count on any general holiday, &c., nor in case of pitmen or other hands striking work, or lockouts, railway detention, or delays through stoppage at collieries with which steamer is booked to load.” The different categories of delay have clearly a bearing on the charterers’ obligation to furnish cargo, and excuse him for the consequent delay which may occur.

The second limb of the sentence is, “Nor from riots, frost, floods or any accidents or cause beyond control of the charterers which may prevent the loading.” These different categories of delay have equally clearly a bearing, not on the furnishing, but on the loading of the cargo. I am not prepared to restrict “any accidents or cause” to such as are *ejusdem generis* with “riots, frost, or flood.” But I agree that they must be accidents or causes beyond the control of the charterers, and they must be such as prevent the loading of a cargo already furnished proceeding in ordinary course.

If this be a sound construction of the charter-party the charterers cannot take benefit from the last part of the exception, for nothing happened to prevent or delay loading. Nor can they take benefit from the first part of the exception, unless they can bring their case under the head of stoppage at the colliery. But stoppage at the colliery must have its ordinary and natural meaning in the collocation in which it is found. There is stoppage of a colliery where accident occurs to pithead machinery or in the underground workings, or from similar causes, and not where the owners resort for their own purposes to short time or other device temporarily to reduce their output. That is all that the charterers can point to here.

I think, therefore, that the charterers are responsible, not for delay in the loading, but for failure in furnishing a cargo. The case is very similar to *Gardiner’s case*, 20 R. 414, and to the “*Arden*” *s.s. Company v. Weir*, 7 F. (H.L.) 126.

The LORD PRESIDENT intimated that LORD SKERRINGTON concurred.

LORD KINNEAR and LORD MACKENZIE at the hearing were sitting in the Extra Division.

The Court pronounced this interlocutor—

“ . . . Sustain the appeal: Recal the interlocutor of the Sheriff-Substitute dated 29th November 1910: Of new find in fact in terms of the findings in fact Nos. (1) to (16) inclusive in said interlocutor: Find further in fact (17) that the delay in loading arose from causes for which the charterers are not excused under the charter-party; and (18) that the demurrage amounted to 134 hours 53 minutes: Find in law that in respect that the detention of the vessel beyond the stipulated load-

ing time was not excused by the terms of the charter-party the defenders are liable in damages: Therefore decern against defenders for payment to the pursuers of the sum of one hundred and twelve pounds eight shillings and one penny, with interest thereon at five per centum per annum from 12th January 1910.”

Counsel for the Pursuers and Appellants—Sandeman, K.C.—Black. Agent—F. J. Martin, W.S.

Counsel for the Defenders and Respondents—Constable, K.C.—Stevenson. Agent—Campbell Fail, S.S.C.

Saturday, December 2.

SECOND DIVISION.

[Dean of Guild Court
of Edinburgh.]

MURRAYFIELD REAL ESTATE COMPANY, LIMITED *v.* EDIN- BURGH MAGISTRATES.

*Burgh—Housing, Town Planning, &c., Act 1909 (9 Edw. VII, cap. 44), sec. 43—
“Back-to-Back Houses.”*

Held that the expression “back-to-back houses” in section 43 of the Housing, Town Planning, &c., Act 1909 comprehended the houses in a tenement containing four houses on each flat—two to the front and two to the back—each house in front being divided from the one behind it by an unbroken and continuous centre wall, but all the houses entering from a common stair in the centre of the tenement.

The Housing, Town Planning, &c., Act 1909 (9 Edw. VII, cap. 44) enacts—Section 43—“Notwithstanding anything in any local Act or bye-law in force in any borough or district, it shall not be lawful to erect any back-to-back houses intended to be used as dwellings for the working classes, and any such house commenced to be erected after the passing of this Act shall be deemed to be unfit for human habitation for the purposes of the provisions of the Housing Acts. . . .”

The Edinburgh Municipal and Police Amendment Act 1891 (54 and 55 Vict. cap. cxxxvi), sec. 49, as amended by section 80 of the Edinburgh Corporation Act 1900 (63 and 64 Vict. cap. cxxxiii), enacts—“ . . . The Dean of Guild Court may decline to grant warrant for the erection of any house or building, or for the alteration of any existing house or building, until the said Court is satisfied that the plans provide suitably for strength of materials, stability, mode of access, light, ventilation, water-closets, and water supply, and other sanitary requirements, and are otherwise in conformity with the provisions of the Edinburgh Municipal and Police Acts.”

The Murrayfield Real Estate Company, Limited, presented a petition in the Dean