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 *"Ardan" 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 loading 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 Faill, S.S.C.

Saturday, December 2.

SECOND DIVISION.

[Dean of Guild Court of Edinburgh.

MURRAYFIELD REAL ESTATE COMPANY, LIMITED *v.* EDINBURGH 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

of Guild Court, Edinburgh, for warrant to erect four tenements, of three storeys each, of dwelling-houses on the west side of Piersfield Grove, Edinburgh, conform to plans produced.

Answers were lodged by the Lord Provost, Magistrates, and Council of the City of Edinburgh, who averred—"(Stat. 1) The four tenements which the petitioners propose to erect on the west side of Piersfield Grove are to consist of three storeys each. The plans produced with this petition show that it is intended to have four houses on each flat—two houses to the front and two houses to the back. Each of the two houses to the front is divided from the adjacent house to the back by an unbroken and continuous centre wall, which prevents effective through ventilation. The houses on the two upper storeys all enter from the staircase which is to be constructed in the centre of each tenement. Their only ventilation is (1) from their respective windows to front or back as the case may be, and (2) from the said staircase, which, together with the passage at the foot thereof, is common to twelve separate residences, and is roofed over with glass and unventilated at the top. The houses therefore are what are known as back-to-back houses. . . . The petitioners' plans do not make sufficient provision for the light and ventilation for the said tenements, in respect that (*a*) the common stair is only lit from the roof, and (*b*) that there is no provision for through ventilation of the houses in the said tenements. The houses at the front and back of the tenement are only ventilated by their windows opening on the front and back respectively, except in so far as they open on the said common stair, which is itself only ventilated from the entrance passage on the ground floor. There is thus insufficient ventilation, and in particular no through ventilation in said houses."

The respondents referred to section 49 of the Edinburgh Municipal Police (Amendment) Act 1891 (54 and 55 Vict. cap. cxxxvi), as amended by section 80 of the Edinburgh Corporation Act 1900 (63 and 64 Vict. cap. cxxxiii).

The petitioners averred — "Denied that said houses are known as back-to-back houses, or are similar in design and arrangement to houses which are so known. *Quoad ultra* admitted under the explanation that the plans permit of the through ventilation of each house and also of the common passage and staircase. The petitioners are willing, if required, to amend said plans by the introduction of a ventilator at the top of the staircase. . . . The petitioners deny that the houses proposed to be erected by them are back-to-back houses in the meaning of the said Act. Such houses are invariably formed by the introduction in a tenement consisting of two houses only of a continuous longitudinal centre wall, the doorways of the respective houses not communicating with each other, and entering from different streets formed on either side of the tenement. The petitioners' plans show no such wall. The houses are all entered from one street by a common passage, which is carried through the tenement to the back green, common to the tenants and occupiers, and as regards the upper flats by a common stair which is lit from the roof. . . ."

The petitioners further averred that the provisions for lighting and ventilation in their plans were suitable and in conformity with the last-mentioned Act.

The respondents pleaded — "Warrant should be refused with expenses to the respondents in respect that (*a*) the warrant craved is for the erection of back-to-back houses in contravention of the provisions of section 43 of the Housing, Town Planning, &c., Act 1909; and (*b*) that the petitioners have not made sufficient provision for light and ventilation for the proposed tenements."

On 16th February 1911 the Dean of Guild (CARTER) repelled the respondents' plea-in-law and granted warrant as craved.

Note.—". . . In considering the question of the applicability of clause 43 of the 1909 Act, the first question which the Dean of Guild Court had to consider was whether the term 'back-to-back' houses was known either in Edinburgh or in Scotland as a description of a certain class of house. The unanimous answer of all the members of the Court was that it was an unknown term.

"The petitioners supplied to the Court some information as to the nature of back-to-back houses in England, and this information was corroborated by the Master of Works, who has had English experience.

"It appears that back-to-back houses in England are built in terraces, and the buildings have a solid party wall running parallel to two terraces, and the houses are built on each side of this party wall, one set of houses facing one terrace and the other set facing the other. In such houses the means of ventilation is from the front of the house except in the case of the houses at the end of the terraces, where there is ventilation on the front and one side.

"The Court having thus been informed of what back-to-back houses in England are, they considered whether the houses in the present case were back-to-back houses in the English sense, and they came to the conclusion that they were not, because in the proposed houses there is ventilation not only from the front of the houses but also into the well of the staircase at the back of the houses, although there is no ventilation from open air to open air as there is in the case of houses running from the front to the back of a tenement. In these circumstances the Court considered section 43 of the Housing Act of 1909 was inapplicable, and that they could not refuse warrant on the ground that the houses would be back-to-back.

"The Court then considered what was the principal objection intended to be struck at by the 43rd section of the Housing Act of 1909, and they were unanimously of opinion that it was defective ventilation.

They further considered that the system of having four houses on each floor as proposed in the present plans is objectionable from the point of view of ventilation, because proper ventilation cannot be obtained merely by means of the well of a staircase like that in the plans before the Court.

"In these circumstances the Court had to consider whether they should exercise the powers conferred upon them by section 49 of the Edinburgh Municipal and Police Amendment Act 1891, as amended by section 80 of the Edinburgh Corporation Act 1900. If the power conferred by these sections had been conferred upon the Court recently the Court would have had no hesitation in rejecting the present plans, but during the time these enactments have been in force the Court have passed many similar plans to these in question, and have previously authorised similar buildings on the petition of the present petitioners in the same street where the proposed buildings will be situated.

"In these circumstances the Court considered that it was undesirable to exercise the powers conferred upon the Court, and they therefore resolved that, subject to certain amendments of detail, the petitioners' plans should not be rejected on the second ground pled by the respondents.

"At the same time the Court take this opportunity of intimating that in the case of future proposals possessing the features shown on the plans now under review, but unattended with the specialty of the present case, they reserve to themselves the right to refuse plans showing four houses to the flat."

The respondents appealed, and argued—The houses for which warrant was craved were "back-to-back houses" within the meaning of section 43 of the Housing and Town Planning Act 1909 (9 Edw. VII, cap. 44). The Act did not define the expression, and it must therefore be construed according to popular usage. The object of the section was to prevent the erection of houses without adequate provision for ventilation, and it naturally applied to such houses as were here proposed, with only one wall facing air space and three party walls — Howkins' Housing Acts 1890-1909 and Town Planning, p. 109. (2) Warrant ought in any case to have been refused in exercise of the powers conferred by section 49 of the Edinburgh Municipal and Police (Amendment) Act 1891 (54 and 55 Vict. cap. xxxvi), as amended by section 80 of the Edinburgh Corporation Act 1900 (63 and 64 Vict. cap. cxxxiii), for the Dean of Guild was of opinion that the provisions for light and ventilation were not suitable. The words used in the Act were no doubt enabling or permissive, but such words must be read as compulsory, wherever as here they were used to effectuate a legal right—*Julius* v. *Lord Bishop of Oxford*, 1880, 5 A.C. 214, *per* Lord Blackburn at p. 224—or were coupled with a duty—*Nichols* v. *Baker*, 1890, 44 Ch. Div. 262, *per* Lopes, L.J., at p. 273. But even if the Dean of Guild had a discretion he was not entitled to exercise it in the way he had done by granting warrant simply because similar warrants had been previously granted and intimating that it would not be granted again.

The petitioners were not represented at the hearing of the appeal.

LORD DUNDAS—This is an application made by the Murrayfield Real Estate Company, Limited, to the Dean of Guild Court in Edinburgh for a warrant to erect buildings upon property which, I understand, admittedly belongs to themselves. They propose to erect four tenements on the west side of Piersfield Grove which are to consist of three storeys each, with four houses on each flat; and we have before us the plans, which show very clearly what the general nature of the proposed houses is to be. We see that there are to be two houses to the front and two to the back, and that the houses to the front are separated from the houses to the back by a centre wall in which there are only certain door openings which lead into a common well.

The petition was opposed in the Court below by the Corporation of Edinburgh upon grounds of public policy and public duty. The Dean of Guild repelled the objections of the Corporation, and the Corporation have appealed to us. No appearance has been made at the bar on behalf of the respondents. This is to be regretted, because we have not had the advantage of any argument by counsel in support of the view taken by the Dean of Guild in the Court below, but we have had the case very fairly stated to us by counsel for the Corporation, and I think we are in a position to give judgment upon it.

It seems to me that the Dean of Guild has erred. The main ground of objection taken by the Corporation is that the houses proposed are back-to-back houses within the meaning of section 43 of the Housing, Town Planning, &c., Act 1909 (9 Edw. VII, cap. 44). That section provides —". . . [*quotes, v. sup.*] . . ." Then follow two provisos which I need not read, because it has been explained satisfactorily that neither of them applies to the present case. The first proviso excludes cases where the medical officer of health for the district certifies that the tenements will secure effective ventilation; and we are told here that not only has no certificate been produced but that a certificate has been refused. The other proviso deals with the case of there being any local Act or bye-laws in force permitting the erection of back-to-back houses, and we are told that no such local Act or bye-laws here exist.

That brings one to consider what are back-to-back houses within the meaning of section 43. The phrase is not defined by the interpretation clause of the Act. We are informed by the Dean of Guild that the phrase is not known in the building trade in Scotland. The Dean of Guild seems to have considered, therefore, that it was something of a technical phrase,

and that he must discover the meaning of it elsewhere. He obtained information with regard to the meaning or application of the phrase "back-to-back" houses in England, with the view, apparently, of discovering from English practice or experience what the technical or the special import of the phrase was. He states in his note—"It appears that back-to-back houses in England are built in terraces, and the buildings have a solid party wall running parallel to two terraces, and the houses are built on each side of this party wall, one set of houses facing one terrace and the other set facing the other." Then he says the houses here are not of the description known in England as back-to-back houses, and concludes that therefore they do not fall within the phrase "back-to-back" houses as used in the Act.

I cannot think that that is a satisfactory or exhaustive way of dealing with the matter. These houses may, I should think, be back-to-back houses within the meaning of the Act, although they do not correspond precisely to what are known in England as back-to-back houses. I do not think the phrase is a technical one; it appears to me to be rather used in the Act in a popular and general sense. I apprehend that if it had been intended to have a definite and restricted meaning it would have been specially so defined by the Act. I do not propose to attempt any definition of what back-to-back houses may mean—an attempt which has not been made, probably wisely, by Parliament; but looking at the plans and considering the description of the houses given, it does seem to me clear enough that the front houses and the back houses do stand to one another in the relation of back-to-back houses.

Now we have it from the Dean of Guild—to whose practical knowledge and experience we should of course pay the greatest deference—that his Court "considered what was the principal objection intended to be struck at by the 43rd section of the Housing Act of 1909, and they were unanimously of opinion that it was defective ventilation." That is matter of legal construction. But he goes on to say—"They further considered that the system of having four houses on each floor as proposed in the present plans is objectionable from the point of view of ventilation, because proper ventilation cannot be obtained merely by means of the well of a staircase like that in the plans before the Court." Now it seems to me that is just the main objection which section 43 of the new Act had in view when it prohibited back-to-back houses. I therefore feel less difficulty in differing from the Dean of Guild's conclusion about the matter, because we have it from himself that the system of ventilation shown in the plan is objectionable; and I think when one takes that objection and reads section 43 in the light of it, one must reasonably conclude, without attempting any general definition of the phrase, that the proposed buildings are back-to-back houses within the meaning of the section.

It is unnecessary therefore to consider the further objection stated by the Town, and which is founded upon their own Municipal Acts—section 49 of the Act of 1891 as amended by section 80 of the Act of 1900—and I prefer to offer no opinion as to the manner in which that objection was dealt with in the Dean of Guild Court. I propose that we should recal the deliverance of the Dean of Guild and remit to him to refuse the warrant asked.

LORD SALVESEN—I am of the same opinion. There is no interpretation clause in the statute defining what are back-to-back tenements. I assume from the absence of such a clause that there is no technical meaning attached to the phrase; and that being so we must apply our own minds to the question whether the tenements for which a warrant is asked are in an ordinary and reasonable sense of the term back-to-back tenements. If they are, then we must, following the Act of Parliament, exercise our jurisdiction over the Dean of Guild Court to prevent them granting a lining for buildings which the Act of Parliament has in the public interest declared to be illegal. That is to my mind a quite sufficient ground of judgment in this case. I do not find it necessary to express an opinion in regard to the other matter to which your Lordship has referred.

LORD GUTHRIE—I am of the same opinion. It seems to me that the Dean of Guild states the question correctly when he says that it is whether these houses are back-to-back houses within the meaning of section 43 of the Act of 1909. It is quite clear from the first proviso that the object of the Act was to secure effective ventilation of the habitable rooms in every tenement. Back-to-back houses—if one may attempt a definition—are houses facing opposite ways and with one common back wall. I am not prepared to say that there might not be houses which would correspond to that definition, but which still would not be back-to-back houses within the meaning of section 43. Mr Robertson suggested that you might have back-to-back houses with ventilating flues going from back to back, which would be perfectly sufficient for securing the effective ventilation of the habitable rooms in every tenement; and if the Dean of Guild were to be of opinion that houses constructed as proposed here, but providing for through ventilation by means of such flues, secured effective ventilation, and if this were certified by the medical officer of health, then it might be that such houses would fall under proviso (*a*) of the section and not within the prohibition of back-to-back houses in the leading portion of the section. That is excluded here, because the medical officer of health has refused to certify the houses, and the Dean of Guild has found that they have no through ventilation at all, the attempt to provide any through ventilation by means of the well of the staircase

being quite insufficient. I therefore concur in the judgment proposed.

The LORD JUSTICE-CLERK was absent.

The Court recalled the interlocutor appealed against, sustained the first branch of the respondents' plea-in-law, and remitted to the Dean of Guild to refuse a lining.

Counsel for Respondents and Appellants —Watt, K.C.—W. J. Robertson. Agent—Sir Thomas Hunter, W.S.

Agents for Petitioners and Respondents —Deas & Co., W.S.

VALUATION APPEAL COURT.

Tuesday, December 5.

(Before Lord Johnston, Lord Salvesen, and Lord Cullen.)

SCOULLER *v.* GLASGOW ASSESSOR.

Valuation Cases — Yearly Value—Public-House — Drawings — Increased Licence Duty—Refusal of Licence-holder to Produce a Statement of Drawings—Finance (1909-10) *Act* 1910 (10 *Edw. VII, cap* 8).

A deduction was claimed from the valuation of a public-house in respect of the increased licence duty imposed by the Finance (1909-10) Act 1910, which at the date of the appeal had been in operation for fully a year. The appellant stated that the drawings of the business had decreased, but when called upon by the assessor to produce a comparative statement of his drawings for the past three years he declined to do so.

Held that the appellant was not entitled to the deduction claimed, in respect that the assessor's demand for the statement of drawings was reasonable, and the refusal to comply with it deprived the assessor of information he was entitled to, and which was necessary in order to enable him to discharge the *onus* of showing that the value of the subjects had been maintained in spite of the increased duty.

Observed (*per* Lord Johnston) that comparison with similar adjacent premises, actually let, might in some circumstances be an important consideration in fixing the value of licensed premises occupied by the owner, but that it afforded no criterion of value where the leases of such let premises had been entered into prior to the imposition of the increased licence duty.

At an adjourned meeting of the Burgh Valuation Committee, held within the City Chambers, Glasgow, on 29th September 1911, John Scouller appealed against the following valuation, *videlicet*:—

Description.	Situation.	Proprietor.	Tenant.	Occupier.	Yearly Rent or Value.
Shop and Cellar	17 to 19 Drury Street	John Scouller ..		Proprietor	£550

The appellant craved that the subjects should be entered in the roll at £491 instead of at £550. The Committee dismissed the appeal, whereupon the appellant craved a case for the opinion of His Majesty's Judges.

The following *facts* were set out in the case—"1. The premises at 17 to 19 Drury Street were owned by the appellant and occupied by him as a public-house. The shop measured 2070 square feet and the cellar 1586 square feet.

"2. The premises were entered by the Assessor in the valuation roll for the year 1910-11 at £595, and the appellant appealed against said entry, and the valuation was adjusted between the Assessor and the appellant at £550 for that year. The Assessor entered it in the roll for 1911-12 at £550. . . .

"5. When the case of the present appellant was called on 29th September, appellant gave evidence to the effect that the Finance (1909-1910) Act 1910 had increased his licence duty by £207, 2s. 11d., and that he claimed a reduction of £104 from his rent in respect thereof, that last year his assessed rental had been reduced by £45, and he now claimed the difference of £59.

"6. The appellant having stated, in answer to the Court, that his drawings had decreased, the Assessor asked him for a note of his drawings for the last three years, which he refused to give.

"7. The Assessor himself gave evidence that a rate of 5s. per square foot on the floorage of the shop gave £517, and a rate of 6d. per square foot on the floorage of the cellar gave £39, 18s., or a total of £556, 18s.; that the public-house at 3 Drury Street, which is adjacent to the appellant's premises, was let at £330; that the floorage of the shop at 3 Drury Street was 1105 square feet and the cellar 972 square feet, and that taking the same rate for the cellar, viz., 6d., gave £24, 6s., and that it required a rate of 5s. 6d. and a fraction for the shop to make up £300, the balance of the rent. It was not proved whether the premises at 3 Drury Street were let from year to year or for a period of years."

The *appellant's contention* was stated thus—"The appellant contends that the effect of the increased licence duty is to entitle him to a reduction of the valuation unless it is shown that the value of the property has been kept up through other causes. No evidence was adduced to rebut the presumption of a decrease in the valuation. Further, the appellant was not bound to state his drawings, nor was he bound to produce his books, unless upon an order dealing with his specific case and upon some relevant statement which a production of his books might establish. The Assessor at no time stated that he was prepared to show that the appellant's drawings had increased. The instance of the Drury Street licence afforded no basis for a judgment in the present case, in respect that no information was laid before the Court as to the date at which the lease of the premises had been entered into, and it is