have been already mentioned, whether contained in that deed or to be left by some other deed, are to be paid. Whatever may have been the purposes mentioned before, it is perfectly clear that the residue and remainder of the estate remaining after the fulfilment of those provisions, and the income thereafter, are to be held by the trustees until the death of the wife.

And then follow the provisions that your Lordships have heard so much commented upon —*First*, there is a legacy to the Free Church College to endow a Chair of Natural Science; *secondly*, a sum for the erection and endowment of a Territorial Church on Dr Chalmers' principle; and *lastly*, a bequest of the whole remaining residue for such of the four schemes of the Free Church, and in such proportions, "as my trustees may see most expedient."

Now, Mr Elder's widow is still alive, and is apparently about the age of 68 years, and the question your Lordships have to determine is, whether the accumulating income of the fund is to be held in terms of that fifth direction and of the other directions until the death of the widow? I must say I have been unable to see the slightest ground upon which we can refuse to give effect to that direction. There have, no doubt, been many cases in which the words of the trust indicate accumulation, but in which, nevertheless, the substance of the will having been already performed, no reasonable object could be gained by allowing the fund to continue to accumulate, and therefore the Court have interposed to authorise the distribution of the fund at an earlier period than the death of the liferentrix or widow, or any postponed period of that kind. If anything of the same kind could have been said here it would have made the case entirely different. I am of opinion that so far from that being at all the scheme and intention of the testator, his objects are too obvious to be overlooked, namely, that this accumulation should take place until the death of the widow, and that then the benefaction should take effect. The residuary legacies, namely, those in favour of the schemes of the Free Church, are quite specific, and the accumulation will make no difference on them, from which it follows that the residuary legatees were truly the persons whom the testator had mainly in view in the postponement of the distribution. Consequently I am of opinion that we should be doing injustice to those very important interests if we were to interfere with so clear and distinct directions.

I think we must answer the first question in the negative.

The Court therefore answered the first question in the negative, and found it inexpedient to answer the second.

Counsel for First Parties—Mackintosh—J. C. Lorimer. Agents—H. & H. Tod, W.S.

Counsel for Second Parties—Trayner—Jameson. Agents—Cowan & Dalmahoy, W.S.

Thursday, March 10.

SECOND DIVISION.

BEYNON & COMPANY *v.* KENNETH.

Shipping Law—Freight.

B. & Co. agreed by charter-party to carry a cargo of coals belonging to K. from Greenock to Monte Video, part of the freight for the same to be payable in cash on sailing, and bills of lading for the balance, payable abroad, to be taken by the captain, "on receipt of which documents all responsibility of the charterer to cease." The coals were loaded, and bills of lading were granted by the captain which contained an acknowledgment of 453½ tons of coal. On arrival at Monte Video, K.'s agent, having presented the bills of lading, proceeded to weigh the cargo, and thereafter instructed their principal that only 398 tons had been delivered. In an action raised against K. for balance of freight retained by him on the short-shipped coal—*held* that looking to the uncertainty of the evidence as to the quantity of coals loaded at Greenock and delivered at Monte Video, K. was not entitled to retain the said balance.

Opinion (*per* Lord Young) to the effect that even when the bills of lading were admittedly inaccurate, the effect of the cesser clause was to release the charterer from liability under the charter-party.

On 9th July 1878 James Spiers Kenneth chartered the ship "Alice," Newport, Monmouthshire, which belonged to Thomas Beynon & Co., to carry a cargo of coal from Greenock to Monte Video. The freight stipulated for in the charter-party was a lump sum of £550, "being payable as follows—say at least £150 sterling on clearing at custom-house, less 6 per cent. for all charges. Bills of lading for the balance, payable abroad, to be taken by the captain, on receipt of which documents all responsibility of charterer to cease." The vessel was sent to a loading-berth at Greenock in the ordinary way, and there loaded a cargo of coal, for which the captain delivered the following bill of lading:—

"Shipped in good order and well conditioned by James Spiers Kenneth in and upon the good ship called the 'Alice,' whereof Jenkins is master for the present voyage, and now lying in Greenock and bound for Monte Video, to say four hundred and fifty-three tons, ten cwts. best Glasgow splint coal, being marked and numbered as in the margin, and are to be delivered in the like good order and well-conditioned at the aforesaid port of Monte Video (the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever excepted) unto order or to assigns. Freight for said goods to be paid by the con-

"Loose—453½ tons coal at 22s. 6d. £510 3 9

"To be taken from alongside at con-

signees' risk and expense at the rate of 30 tons per weather-working day.

signees at the rate of twenty-two shillings and sixpence per ton of twenty cwts. delivered, no primage and average accustomed.

"In Witness whereof the master or purser of said ship hath affirmed to three bills of lading, all of this tenor and date, one of which bills being accomplished the others to stand void.

"Dated in Glasgow, 5th Aug. 1878.

"Weight and contents unknown.

"Leakage and breakage excepted.

"Received the sum of £200 advance on within bill of lading, on which all charges have been paid."

Before the vessel sailed the captain received payment from Kenneth of the sum of £152, 1s. 5d., and was induced by him to sign a note stating that the sum of £200 was paid to account; this left a balance of £397, 18s. 7d. to be payable abroad in terms of the charter-party. On the vessel's arrival at Monte Video Messrs Bates, Stokes, & Co., Kenneth's agents at that place, produced the bill of lading and requested delivery of the cargo on his behalf, which the captain gave them, delivering the whole of the coals and other cargo received by him in Greenock. They then proceeded to weigh them as agents of the consignee, but being dissatisfied with the weight they wrote to Kenneth in the following terms:—

"Dear Sir,—Since last writing you on the 31st we have not received any of your valued favours.

"The 'Alice' has completed her discharge, and we regret to inform you has delivered only $398\frac{4}{10}$ tons of coal in place of $453\frac{1}{2}$ tons, as per bill of lading. From the captain we can obtain no explanation of how the deficiency can have arisen, and as the difference was so large (although the B. lading was signed for weight unknown), we have considered it prudent for your interests to deduct value of same from his freight, which has been protested against by him before the English Consul here. We have charged him with 55 t. 8 c. @ 8/9 per ton=£24, 4s. 9d., which amount should you not lawfully be able to retain you will please pay the owners of the 'Alice,' and we have credited you with our Liverpool friends for equivalent." . . .

Subsequently the captain applied to Bates, Stokes, & Co. for payment of the freight, but received from them a statement of account in which they (1) credited the ship with £535, 12s. 1d. as the freight instead of £550; and (2) debited the ship with £24, 4s. 9d., being the alleged value of 55 tons 8 cwts. of coal which they stated the captain had failed to deliver; and (3) debited the ship with a payment to account at Greenock of £200 instead of £152, 1s. 5d., founding on the before-mentioned note on the bill of lading. The result of this was to diminish the amount to be paid to the captain by the sum of £86, 11s. 3d. For this balance the present action was raised against Kenneth as the charterer of the vessel.

The pursuers pleaded—"(1) In terms of the foresaid charter-party the defender is liable as charterer for the balance of freight sued for. (2) As consignee of the cargo the defender is liable under the said charter-party and bills of lading, and also at common law, for payment of the said balance of freight. (4) The captain of the said vessel having delivered the said cargo to the agents of the defender on the agreement and faith that the freight would be paid on completion of the discharge, the defender is liable for said balance of freight."

The defender on the other hand pleaded—"(1) The pursuers having agreed by said charter-party that the defender's responsibility should cease on bills of lading being granted, the defender ought to be assoilzied with expenses. (2) The pursuers having granted bills of lading for $453\frac{1}{2}$ tons coal, and having failed to deliver $55\frac{8}{20}$ tons thereof, the defender is entitled to set off as against pursuers' claim the value of said coals short delivered, and the freight applicable thereto as fixed by pursuers. The endorsation of the bills of lading was made for the convenience of both parties, and does not in any way affect the real question between the parties. (3) The said $453\frac{1}{2}$ tons having been actually put on board, and bills of lading granted therefor, and the pursuers having failed to deliver the same to the extent foresaid, the defender's right to set off the value and freight applicable thereto ought to be upheld, and decree of absolvitor pronounced with expenses. (4) The pursuers in any event are only entitled to freight per bill of lading on the quantity actually delivered."

The Sheriff-Substitute (Guthrie) found on a proof "That the defender shipped on board the pursuers' ship 'Alice' at Greenock a cargo consisting chiefly of coals, for which the master granted bills of lading: Finds that on delivery of said bills of lading the defender's liability under a previous charter-party libelled on ceased in terms of said charter-party, and that the pursuers are not entitled to sue for the lump sum of freight therein stipulated: Finds that the defender, as consignee and owner of the cargo so shipped through his agents, Messrs Bates, Stokes, & Company, received delivery at Monte Video of the cargo so shipped, and is liable in payment of freight therefor under said bills of lading: Finds that the pursuers have proved that the bills of lading are granted for a larger quantity of coals than were in fact loaded on board said ship by 10 tons, the freight of which is £11, 5s.: Finds that the balance of freight due under said bills of lading, after making said deduction, and after giving credit for the sums paid to account by the defender as condescended on, is £75, 6s. 3d. sterling, for which decerns against the defender in favour of pursuers."

He added this note—"The pursuers, the owners of the 'Alice' of Cardiff, sue for the balance of freight due to them by the defender for a voyage from Greenock to Monte Video. The cargo was loaded under a charter-party which stipulated for a lump freight of £550. Of this sum a part was paid in terms of the charter-party at Greenock, and a further sum was paid by the consignees at Monte Video; but the amount sued for was retained by the consignees, who are the defender's agents, on account of an alleged short delivery of coals shipped, and of the freight applicable to them as brought out by the bills of lading signed by the master.

"The first question is, What quantity of coals

was shipped? The master signed a bill of lading for 453½ tons, and this, as was said in *M'Lean & Hope* v. *Fleming* (9 Macph. H. of L. 38), is *prima facie* evidence against the shipowner that such a quantity actually was shipped. The shipowners have not rebutted this presumption except to a small extent, for their own case shows that only about 443 tons were shipped.

"The next point is, whether there was right delivery of this quantity at Monte Video? The captain and the witness Evans say that all the coals shipped were delivered, and they are supported by the other witnesses so far as they are able to speak on this subject, and by the absence of any suggestion of the possibility of the coals shipped being made away with. On the other hand, there is reason to suspect the accuracy of the weighing at Monte Video, upon which the defender's agents relied when they retained part of the balance of freight which was due according to the bill of lading and freight-note in process. I am therefore of opinion that upon the evidence the pursuers have made a right delivery of the goods shipped, and that the consignees at Monte Video were not justified in retaining part of the freight due for these goods.

"The defender, however, maintains that he is free from responsibility for the freight sued for by the clause in the charter-party, 'bills of lading for the balance, payable abroad, to be taken by the captain, on receipt of which documents all responsibility of charterer to cease.' And it appears that the bills of lading were made out and apportioned to the different parts of the cargo in such terms and at such rates as to bring out the exact amount of the lump freight stipulated for. The clause in question is not very accurately expressed, because the master *makes* or *grants*, and does not *take* the bills of lading; but that inaccuracy may pass, as the meaning cannot be doubtful. Nor does it seem to be material that the cesser of the charterer's liability is to take place upon delivery of the bills of lading, and not, as in all the reported cases relating to clauses of this kind, 'upon the loading of the cargo,' or 'as soon as the cargo is loaded.' It may be more for the ship's advantage that the charterer is not absolved until bills of lading have been adjusted in such terms as to give the shipowners the same rights against the consignees and the cargo as they have against the charterer. But it seems that the construction of the charter-party in regard to the liberation of the charterer must be practically the same as if the clause had been couched in the most familiar terms. The effect of this kind of clause has been the subject of discussion in numerous English cases, from *Ogleby* v. *Iglesias* downwards. References to all of them may be found in the two latest cases, which also bear more directly on the present question—*French* v. *Gesber* (45 L.J. C.P. 880; L.R. 1 C.P. Div. 737), and *Sanguinetti* v. *Pacific Steam Navigation Company* (46 L.J. Q.B. 105; L.R. 2 Q.B. Div. 238). These cases have arisen out of the efforts of shipowners to fix upon charterers liability in spite of this clause, and two points have been made clear by the judgments of the Court—(1) that when the clause is expressed with the ordinary generality and clearness, all liability ceases, whether antecedent or posterior to the loading; and (2) that it ceases (with, perhaps, an exception in the case of antecedent liabilities, for which no lien is given) without respect to any lien which may or may not be given by the contract. Here it may be remarked the charter-party is peculiar, in so far as it has not the words which generally follow the clause under consideration conferring a lien for freight, dead freight, and demurrage; but as the claim is for freight, which is protected by a lien at common law, no question is suggested by the omission of the lien clause. It was argued, however, that as the defender was owner and consignee of the goods shipped, he cannot be absolved by this clause. The answer to this is that the contract declares that his liability ceases in a certain event which has occurred, and that it is the province of the Court to construe, not to make, the contract. This point was distinctly decided by the Queen's Bench Division in the case of *Sanguinetti* cited, the observations in which conclusively show what the contract is, and that a charterer may have good reason for being relieved from liability even when he is owner of the cargo and ships it to his own agent. But it is evident that the liability which is thus discharged is only the defender's liability under the charter-party, and no more was determined in the case referred to. That decision expressly left open the question whether by obtaining delivery of the goods through his agent the charterer may not incur a liability to the ship entirely independent of the charter. Now, in this case I am of opinion that the charter ceased to be an operative contract when the bills of lading were delivered. But upon the bills of lading the defender was designated as consignee, and the cargo was delivered upon his order to Bates, Stokes, & Company at Monte Video, his agents, who, as the correspondence shows, sold it on his account. In these circumstances it is impossible to dispute that apart from the charter-party, and even if the charter-party had never existed, an obligation to pay freight lies upon the defender in virtue of his receiving the cargo under the bills of lading, unless there be something to show that no contract to pay freight could be inferred from such receipt. Here there is nothing of that kind, and I can only hold the cesser clause in the charter-party to put an end to the obligations under that contract. It cannot affect the separate and distinct contract created by the shipment of the goods and their delivery under the bills of lading. See also authorities in Bell's Principles, sec. 421. A deduction from the freight claimed to the extent of £11, 5s., the freight having been calculated upon 453 tons instead of 443, the quantity actually shipped, must however be made."

The defender having appealed, the Sheriff (CLARK) adhered to the Sheriff-Substitute's judgment. On appeal to the Court of Session it was argued for him—(1) By the terms of the charter-party the only action was against the consignees abroad. (2) By the terms of the bills of lading the weights at Monte Video were conclusive. (3) He was quite entitled to deduct freight for the deficiency, and the cost price at Greenock.

Cases cited—*Barwick* v. *Burnyeat, Brown, & Co.*, 31st Jan. 1877, 36 Law Times, 250; *French* v. *Gesber*, 45 L.J. C.P. 880, L.R. 1 C.P. Div. 727; *Sanguinetti* v. *Pacific Steam Navigation Co.*, 46 L.J. Q.B. 105, L.R. Q.B. Div. 238; Foard on Law of Merchant Shipping, 254, 255; *Coulthurst* v. *Sweet*, 30th May 1866, 1 L.R. C.P. 649; *Tully* v. *Terry*, 7th July 1873, 8 L.R. C.P. 679.

At advising—

Lord Justice-Clerk—[*After narrating the facts of the case*]—Now, the cesser clause in the charter-party provided that a certain amount of the freight should be paid in advance by the charterer, and that bills of lading for the balance, payable abroad, should be taken by the captain, and that on that being done all responsibility on the part of the charterer should cease. It has been ruled—and as far as freight is concerned here I should have been inclined so to decide it—that where such a clause is contained in a charter-party, at least in the first instance, the charterer has no liability under the clause, and that the master and owner must trust to the cargo if the cargo be sufficient to meet the freight; of course if the cargo is not worth the amount, the liability of the charterer will remain. The Sheriff-Substitute says that here the consignees were the agents of the charterer, but I do not think that that makes any difference. I think that the owner takes the consignee abroad as his proper debtor until he has exhausted the cargo. It may be that if the consignee failed an action would be competent against the charterer. I give no opinion on that matter.

But we are here at the end of a litigation, not at the beginning, and I do not think it necessary to come to any conclusion on that matter, the more so as the amount involved is only £24 odds. I come to a short and simple conclusion. I think it not proved that more than 398 tons were delivered, and not proved that more than 398 tons were put on board. I see no evidence to meet this except that it was alleged that 453 tons were put on board, and that the water-line of the vessel indicated something like that amount. The *onus* lay on the carrier to prove that more than 398 tons were delivered, and he has not done so. On the other hand, it is equally clear that the charterer has failed to prove that more than 398 tons were put on board. I surmise there must be considerable laxity in weighing at Greenock. The clerk of the local company says that the exact amount of coals sent to the vessel was 468 tons. The mineral superintendent of the Caledonian Railway Company says it was 462 tons. Then that is corrected again by the shipping clerk, who says the amount was 437 tons. And yet the bills of lading state it to be 453 tons. You cannot trust that. The result therefore is, that while it is not proved that more than 398 tons were delivered, it is not proved that more was put on board. In this state of uncertainty we must hold that the consignee was not entitled to deduct the £24, 4s. 9d. as the value of coals alleged to be short delivered. The result, therefore, at which I arrive is that the defender is bound to pay that sum, but otherwise is entitled to absolvitor.

Lord Young—I am of the same opinion. The Sheriff has not entertained this as an action laid upon the charter-party, and I think he has properly refused to do so. The Sheriff, however, holds that the action is well founded, to the extent stated in his interlocutor as laid on the bills of lading, and to that extent I agree with your Lordship that he has taken an erroneous view. The view that the action cannot be maintained as laid on the charter-party is founded on the cesser clause, which I take exactly as your Lordship has done. A charter-party is a contract for the hire of a ship, either generally or for a particular voyage, with an obligation to take on board a cargo of a certain weight and deliver it at a certain port; and so it involves a contract for the carriage of goods. Now, bills of lading we know are simply contracts for the carriage of goods. They have by the law merchant certain virtues in passing the property of goods—virtues introduced partly by custom and partly by judicial decisions. But they are in their nature simply contracts for the carriage of goods. Now, the meaning of the cesser clause in a charter-party is that when these contracts for the carriage of goods, namely, bills of lading, are entered into between the parties to an amount that will cover the freight, then the contract under the charter-party shall cease—that is, that there shall not be double contracts for the same end. And it is extremely convenient that the bills of lading should supersede the charter-party, because then any dispute about the performance of the contract would be raised and settled at the port where delivery is given and payment of freight demanded. That I take to be the meaning and principle of the cesser clause. Now, here the bills of lading were granted to the full amount requisite under the charter-party.

There was a point in this case which perplexed me a little. I agree with your Lordships that it is not proved that a larger quantity was put on board the ship at Greenock than was delivered at Monte Video. There was this perplexity, that in that view bills of lading had not been granted or should not have been granted to an amount sufficient to cover the freight, and that therefore the cesser clause had not been brought into operation. But though I agree with your Lordship that it is not proved as against the petitioners here that the measure at Greenock was in excess of the quantity delivered at Monte Video, I think the terms of the bill of lading granted by the master are conclusive as against the shipowners. The cesser clause thus comes into operation, and the contract between the parties is contained in the bills of lading. But if the shipowners have delivered up the goods upon payment of insufficient freight, less than was due to them, and have thus given up their lien, they may have an action against the party to whom they delivered the goods. They may suffer from their having given up their lien, but that will not revive rights lost under the cesser clause.

On the only other matter, viz., regarding the £24, 4s. 9d., I agree with your Lordship. That sum was kept off the freight as the value of coals received at Greenock and not delivered at Monte Video; and Messrs Bates, Stokes, & Co. write to their principal, the defender in the present action—"We have charged him [the captain] with 55 t. 8 c. @ 8/9 per ton=£24, 4s. 9d., which amount should you not lawfully be able to retain you will please pay the owners of the 'Alice,' and we have credited you with our Liverpool friends for equivalent." Now, I think that that sum was not well retained, and I think that the defender has here a proper order to pay that amount, and that this action should be sustained to that extent and no further.

Lord Craighill—I concur in the result at which your Lordships have arrived. I am

satisfied on the proof that not more than 398 tons were delivered, and that being so, the party liable under the bills of lading was not liable for more. I am also satisfied that it has not been proved that more than 398 tons were put on board, and that being so, the ground upon which the pursuer claims the difference cannot be allowed. His case on this point is that he put on board 453 tons, and if the evidence taken altogether leaves a reasonable doubt on that matter the grounds of his claim must fail. Entertaining to a large extent the views expressed by your Lordships on the question of law decided by the Sheriff, and ably and anxiously argued in this Court, I do not think it necessary to make up my mind or deliver an opinion. I may say, however, as regards the cesser clause, that once the bill of lading was delivered, the defender was relieved of any liability under the charter-party. Were it otherwise the cesser clause would have no effect. The import of that clause appears to me to be no more than this, that the charterer shall no longer be responsible under the charter-party. If there are other grounds of liability not resulting from the charter-party, there is no inconsistency between such liability and the terms of the cesser clause terminating the charterer's liability under the charter-party. Whether or not under the bills of lading a new contract was constituted, the effect of which was to render the charterer liable as consignee, is a question which the Sheriff-Substitute has decided, but the decision of that question is not necessary in the present case. Were it necessary to reach a conclusion in this matter, my inclination would be to support the view the Sheriff-Substitute has adopted, and I am satisfied that according to the English cases there would be no inconsistency in arriving at this result, for on looking at the case of *Sanguinetti* (2 L.R., Q.B. Div. 249) I find that the question was expressly reserved whether charterers might not be liable in respect of something that had occurred after they had been freed under the cesser clause. Lord-Justice Mellish says—"We give no opinion one way or the other in respect of any claim that there may be against the defendants on account of their agent or manager having requested that the cargo should be delivered without the lien for demurrage having been enforced." Hence it may well be that though free from liability under the charter-party the defender may be liable under the bills of lading. But, as I have said, it is not necessary, according to my view, to a conclusion on that matter. All I desire to do is to reserve my opinion till it may be necessary to give judgment on that point.

The Court pronounced the following interlocutor:—

"Find that it has not been proved that the coals shipped at Greenock were not all delivered: Find it not proved that more than 398 tons were delivered to the consignee at Monte Video: Therefore sustain the appeal; Recal the judgments of the Sheriff appealed against: Find the defender (appellant) liable in the sum of £24, 4s. 9d., and decern against the defender for payment of that sum to the pursuers (respondents): *Quoadultra* assoilzie the defenders from the conclusions of the action."

Counsel for Appellants—R. V. Campbell. Agent—J. Stewart Gellatly, L.A.

Counsel for Respondent—Guthrie. Agents—Morton, Neilson, & Smart, W.S.

Saturday, March 12.

FIRST DIVISION.

[Lord Adam, Ordinary.

M'MEEKIN *v.* RUSSELL AND ANOTHER.

Reparation—Wrongous Use of Diligence—Bill—Liability of Endorsee who gives Bill to Endorser to Enable him to do Diligence.

The endorsee for value of a bill of exchange who has without re-endorsement put the endorser into possession of the bill in order that he may do diligence thereon, is not liable in damages should the use of diligence turn out to be wrongous, unless he was aware when he gave the endorser the bill of the circumstances which made the use of diligence wrongous. Averments *held* irrelevant to found an issue for damages against such an endorser.

Process—Issues—Wrongous Apprehension and Imprisonment.

Circumstances in which separate issues for wrongous apprehension and wrongous imprisonment *disallowed.*

The pursuer in this case, Thomas M'Meekin, was the granter of a bill of exchange, of which the defenders Robert Russell and Alexander Tudhope were respectively the grantee and the endorsee. The action was one of damages for wrongous apprehension and imprisonment, and the point now to be referred to related to the adjustment of issues. The following were the material averments of the pursuer:—Prior to the month of December 1877 the pursuer and the defender Russell, who are cousins, were in the habit of mutually accommodating each other by drawing and accepting accommodation bills. For this purpose they frequently signed and delivered to each other blank bill stamps, which were filled up and discounted by the receiver as he found it necessary. In accordance with this practice the defender Russell wrote the pursuer a letter, dated 25th July 1877, enclosing two blank bill stamps for the latter's signature. No value was given therefor, the documents being intended to be used only for Russell's accommodation. The defender filled up one of these bill stamps so that it bore to become due in or about the month of October 1877. When it fell due the pursuer, in order to take this bill out of the way, signed and delivered to Russell another blank stamp for the latter's accommodation as formerly. The pursuer's estates were sequestrated in December 1877, after which no further transactions of any kind took place between him and the defender Russell, and no bills or bill stamps have since been signed by the pursuer, either for the defender or any other person. The pursuer was discharged on payment of a composition in December 1879. The defender, although well aware of said sequestration, and of the whole proceedings therein, never lodged any claim in respect of the bill for £100 after mentioned. In March thereafter