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

the pursuer arranged to go with his family to Australia, and paid half of the passage-money—the steamer being timed to leave on 31st March 1880. He had then in view lucrative employment abroad, and the defender Russell, who was aware of this, and of the pursuer's intention to leave Scotland, twice called upon the pursuer and urged upon him to arrange for payment of two bills which had arrived at maturity, and which had been drawn in accordance with the foresaid practice for the pursuer's accommodation prior to the sequestration. The pursuer absolutely declined to accede to the defender Russell's demands, and a quarrel arose in consequence between them. The defender Russell declared that he would prevent the pursuer from carrying out his intention of going to Australia, and asserted generally that he had within his power the means for effecting this. Nothing was said at either of these meetings, or at any time previously, by the defender to the pursuer as to the after mentioned bill alleged to be due on said 4th March 1880. "(Cond. 6) The pursuer was thereafter, without any further communication with the defender Russell, apprehended as after mentioned on his (Russell's) instructions as *in meditatione fugæ*. The debt on which the proceedings were taken by the defender was set forth as a sum of a £100 contained in a bill alleged to have been drawn by the defender upon and accepted by the pursuer, and dated 1st March 1879, payable twelve months after date, and endorsed by the defender Russell to the defender Tudhope, who was said to be the then holder thereof. In the petition presented for the pursuer's apprehension and detention the defender Russell stated in his condescendence, *inter alia*, that the pursuer became indebted to him in said sum of £100 for which the bill was granted; that he endorsed the bill to the other defender Tudhope for value; that in the event of the pursuer failing to pay the contents the said defender Tudhope would fall back upon Russell for recourse; and that thus the defender Russell had an interest to apprehend and detain the pursuer. The petition in said *fugæ* proceedings was presented on 6th March 1880, by which time the pursuer had taken out and paid for the passage to Australia of himself, his wife, and children—a circumstance well known to both defenders, or at all events to the defender Russell. In order to accomplish this the defender Tudhope gave facilities to the defender Russell by reinstating the latter in the possession of the bill which was founded on and produced in the proceedings." "(Cond. 7) The defender Russell was thereafter examined by the Sheriff-Substitute of Lanarkshire at Airdrie, and deponed to the truth of the statements made by him against the present pursuer, and specially that the pursuer was justly due to him the said sum of £100. The pursuer, on the other hand, deponed that the debt was not due, that he had no transactions with Russell subsequent to the date of his sequestration, and that at that date Russell held certain bill stamps signed blank by the pursuer, of which the one founded on was one, the same having been filled up after the pursuer's sequestration. The pursuer, who was arrested on these statements, and examined by the Sheriff-Substitute, was ordained on 8th March 1880 to be committed to prison till he found caution to remain in Scotland for two months, being a period beyond the date of his arrangements to leave Scotland." "(Cond. 8) The pursuer never heard of said bill alleged to be due on 4th March 1880 until he was apprehended as aforesaid, nor was he ever asked for payment of its contents until he was in custody and within the precincts of Airdrie Court-house, where it was presented at the instance of the defender Tudhope, who in turn had got it back for this purpose from the other defender Russell. Thereafter the defender Tudhope protested the said bill, and caused it to be recorded and published against the pursuer. Both the presentation of said bill at the time and place specified and the subsequent publication of the protest by the defender Tudhope were illegal acts, and were wrongously and maliciously done with the view of securing the pursuer's detention in the event of the defender Russell failing in his *fugæ* proceedings. For these acts the defender Tudhope is liable in damages to the pursuer along with the defender Russell." "(Cond. 9) The pursuer believes and avers that the bill on which said proceedings were taken was really one of the blank bill stamps mentioned above, and which was filled up by the defender Russell or his son at his request in March 1880, or at all events long after the pursuer's sequestration. The pursuer further believes and avers that this was done by the said defender, and the whole of the proceedings *in meditatione fugæ* taken by Russell, most wrongously and maliciously, for the purpose of extorting money from the pursuer which he was not actually due—a circumstance known also to the other defender Tudhope, and to his law agent, Mr Robert Mure, writer, Lanark, who also acted as agent for Russell." The pursuer further averred, on the information and statement of the defender Russell, as set forth in another action relating to the bill, that the said bill was endorsed by him (Russell) to the other defender Tudhope, without recourse, previous to the date of said proceedings against the pursuer as *in meditatione fugæ*, that it was not presented for payment till after the *fugæ* proceedings were depending, that it was not protested as against him (Russell), and that he received no notice of its dishonour. "(Cond. 11) The pursuer was, as the defenders well knew, or at all events as the defender Russell well knew, due nothing to them, or either of them, when said proceedings were adopted against him, and the statements on which the defender Russell obtained said warrant for the pursuer's imprisonment were false, and were made by the defender Russell, most wrongously, unjustly, and maliciously, and in the knowledge that they were false, for the purpose of securing the pursuer's imprisonment, in the hope that the defender would thereby extort money from the pursuer to which he was not on any ground entitled." "(Cond. 12) In consequence of said proceedings the pursuer forfeited the passage-money paid as aforesaid, while he and his wife and family have been prevented from taking advantage of the lucrative prospects then before them abroad. Besides, the pursuer himself has suffered seriously in his feelings and person by his incarceration in Airdrie Prison, and by the other wrongous use of diligence done against him and his estate at the instance of the defenders. The loss and damage thus sustained by the pursuer is moderately estimated at

the sum of £1000 as concluded for, and for this the defenders are jointly and severally, or severally, liable to him."

The defender Russell admitted that the pursuer had been arrested as *in meditatione fugæ*, but he averred that the bill had been "granted by the pursuer to the defender for full value in money advanced by the defender to the pursuer, on or about its date, for the purpose of enabling the pursuer to obtain or assist him in obtaining his discharge on a composition." The other defender (Tudhope) admitted that he had handed the bill back to Russell as alleged, but he explained that he was no party to Russell's proceedings, and knew nothing about the prior history of the bill, of which he was onerous endorsee. Both defenders denied that the bill had been endorsed without recourse.

The pursuer pleaded—"(1) In the circumstances stated as to the origin and history of the bill founded on, the pursuer is entitled to decree of reduction and declarator as concluded for. (2) The pursuer having been most wrongously and illegally apprehended and imprisoned, and otherwise subjected to the wrongous use of diligence at the instance of the defenders, as condescended on, and having suffered loss as stated in consequence, he is entitled to decree of payment against the defenders, jointly and severally, or severally, as concluded for. (3) *Separatim*, The bill in question having been endorsed by the defender Russell to the defender Tudhope without recourse, as condescended on, the defender Russell is liable to the pursuer in damages, as concluded for. (4) In any event, the pursuer is entitled to such decree of payment against the defender Russell."

The defender Russell pleaded—"(1) The pursuer's averments are not relevant or sufficient to support the conclusions of the summons. (2) The pursuer's averments in relation to the bill in question can only be proved by the defender's writ or oath. (3) The pursuer's allegations, so far as material, being unfounded in fact, and his pleas being untenable, the defender ought to be assoilzied with expenses."

The defender Tudhope pleaded — "(1) The pursuer's averments are not relevant or sufficient to support the action so far as directed against this defender. (2) The pursuer's allegation, so far as relating to this defender, being unfounded in fact, and his pleas being untenable, this defender ought to be assoilzed, with expenses."

The Lord Ordinary (ADAM) approved of the following issues: — "(1) Whether the bill stamp on which the pretended bill is written was signed by the pursuer when altogether blank, or at least when blank in many of the essentials of a bill, and was delivered to the defender Robert Russell in that condition prior to the sequestration of the pursuer in December 1877? and whether the said bill stamp was filled up or caused to be filled up by the said defender, and was by him after the said sequestration of the pursuer wrongfully endorsed to the defender Alexander Tudhope, to the loss, injury and damage of the pursuer? (2) Whether on or about 8th March 1880 the pursuer was wrongfully apprehended at or near Coatbridge on an application at the instance of the defender Robert Russell against him as *in meditatione fugæ*, to the loss, injury and damage of the pursuer? (3) Whether on or about 8th March 1880 the pursuer was brought before David Davidson Balfour, Esq., Sheriff-Substitute of Lanarkshire, at Airdrie, under the said application at the instance of the defender the said Robert Russell against the pursuer as *in meditatione fugæ?* and whether under the said proceedings *in meditatione fugæ*, and on the application of the defender Robert Russell (or of another or others for whom he is responsible), the pursuer was wrongfully incarcerated in the prison of Airdrie on said 8th day of March, and detained there as a prisoner till the following day by virtue of a warrant granted by the said D. D. Balfour, to the loss, injury and damage of the pursuer? (4) Whether the bill was endorsed by the defender Alexander Tudhope 'without recourse,' and whether the defender Alexander Tudhope wrongfully re-delivered the said bill to the defender Robert Russell for the purpose of having the pursuer wrongfully apprehended and detained under said application as *meditatione fugæ*, to the loss, injury and damage of the pursuer? (5) Whether the defender Alexander Tudhope, on or about 8th March 1880, wrongfully protested, or caused the said bill to be protested, against the pursuer for non-payment, and thereafter wrongfully caused the said protest to be recorded in the Sheriff-Court Books of the county of Lanark, to the loss, injury and damage of the pursuer?"

Both defenders reclaimed.

Argued for Russell—Admitting that the pursuer's sequestration cut down the mandate to fill up the blank bill, there was nothing on record to preclude the idea that the mandate had been renewed after the pursuer's discharge. The bill was dated after the discharge. In any case there was no ground for having a separate issue for the wrongous apprehension and the wrongous imprisonment, and the damages under first issue ought to be limited to the amount of the bill.

Argued for the defender Tudhope—Tudhope was onerous endorsee of the bill. It was not averred that he knew the bill was an accommodation bill, assuming that that was its nature, nor that the bill had been signed and delivered blank prior to the pursuer's sequestration. In giving the bill to Russell, therefore, for the purpose of diligence, Tudhope did nothing that was not within his right, whatever the case might be as against Russell. The second and third issues ought to be disallowed.

Argued for the pursuer — The case against Russell was clear. What was averred was that he had filled up, or at least dated, the blank stamp after the pursuer's sequestration, but the sequestration had cut down the mandate to fill up the blank stamp. As regards the apprehension and the imprisonment being put in issue separately, the pursuer had no particular interest to insist on this being done in the present case. He had merely followed the practice—*Ford* v. *Muirhead*, 19th May 1858, 20 D. 949. Further, he could not object to the damages under the first issue being limited to the amount of the bill. As regards the other defender, the fair import of the record was that he was cognisant of the true nature of the bill, but even if he was not, he was not entitled to hand the bill back in the way he

had done without making himself liable for the consequences. He knew that diligence was to be done on the bill.

At advising—

Lord President—With regard to the first issue I do not think there is any difficulty. The statements of the pursuer are quite distinct. He says that he was in the habit of signing blank stamps for the defender Russell, and in particular that he gave two such bills in July 1877; that these two bills were entirely for the accommodation of Russell, no value being received by the pursuer himself; that one of these bills was filled up and put into the circle, and that when it became due in October 1877 it was replaced by another blank stamp which the pursuer signed and gave to Russell. Now, the pursuer says that one or other of these blank stamps—either the remaining one of the two which he delivered in July, or the one delivered in October—is the blank stamp on which the bill charged on is made; and in confirmation of this he says, that having been sequestrated in December 1877, he did not sign or issue any stamp or bill after that date. Now, the issue which he proposes is in these terms:—"(1) Whether the bill stamp on which the pretended bill is written was signed by the pursuer when altogether blank, or at least when blank in many of the essentials of a bill, and was delivered to the defender Robert Russell in that condition prior to the sequestration of the pursuer in December 1877? and whether the said bill stamp was filled up or caused to be filled up by the said defender, and was by him after the said sequestration of the pursuer wrongfully endorsed to the defender Alexander Tudhope, to the loss, injury, and damage of the pursuer?"

Now, I think that this issue is entirely supported by the record, and is quite relevant, because although the delivery of a blank stamp is undoubtedly an authority to fill the bill up with the amount carried by the stamp, or if the amount is, as seems to be the case here, written on the bill, then for that amount; yet though that is clear in law, it is also clear that if the stamp is merely for the accommodation of the party receiving it, and if the party signing the bill becomes bankrupt and is sequestrated, it is out of the question that the holder can use it after the sequestration. The notion of rearing up after sequestration a debt for the sole accommodation of the holder is entirely contrary to the fundamental principles of bankrupt law. I do not entertain any doubt therefore about the first issue. I think we should allow it.

With regard to the next two issues I shall postpone what I have to say until I have considered the fourth and fifth issues. These issues are directed against the other defender Tudhope, and he is sought to be made liable for the proceedings taken against Russell, on the ground that Russell was *in meditatione fugæ*, the debt being the bill in question. Now, if Mr Tudhope had been acting in concert with Russell, in full knowledge of the circumstances that the bill was given solely for the accommodation of Russell, and that it was delivered before, but was not issued till after, the sequestration, there would be a great deal to say for making Tudhope liable. But there is no averment which comes up to that. What is said is that the bill was endorsed by Russell to Tudhope, and that when Russell proceeded against the pursuer as being *in meditatione fugæ* "the defender Tudhope gave facilities to the defender Russell by reinstating the latter in the possession of the bill which was founded on and produced in the proceedings." Now, if Tudhope was an endorsee for value—and it is not alleged that he was not—the crucial matter is this, that if the bill is honoured then the debt due by Russell to Tudhope is paid, but if it is not honoured the debt due by Russell still exists. Thus it is just as much for the interest of Russell as it is for the interest of Tudhope to get the bill enforced; and if the debtor in the bill is *in meditatione fugæ*, there is an equal interest both in Tudhope and Russell to prevent that *fuga*. There is therefore nothing irregular in Tudhope being a party to these proceedings. There is nothing wrong, unless on the assumption that Tudhope was in the knowledge that the whole debt was a sham and the bill entirely for the accommodation of Russell, which is not alleged. The only other averment which at all tells against Tudhope is in these terms:—"The pursuer never heard of the said bill alleged to be due on 4th March 1880 until he was apprehended as aforesaid, nor was he ever asked for payment of its contents until he was in custody and within the precincts of the Airdrie Court-house, where it was presented to him at the instance of the defender Tudhope, who in turn had got it back for this purpose from the other defender Russell. Thereafter the defender Tudhope protested the said bill, and caused it to be recorded and published against the pursuer." Now, I cannot see that Mr Tudhope has done anything wrong in this. It was quite proper that he should act in this way. Everything would be wrong that he has done, if it was done in the knowledge of the prior proceedings by Russell, but if he did not know about these proceedings he was just availing himself of his legal rights as endorsee of the bill.

There is but one other averment of the least importance against Tudhope, and it is contained in condescendence eleven. It is there said—"The pursuer was, as the defenders well knew, or at all events as the defender Russell well knew, due nothing to them or either of them." Now, this is just one of those averments which as in questions of relevancy must be taken as meaning nothing more than the smallest substance which the words will bear—that is to say, in the present case that Russell well knew, and not that Tudhope well knew. But the pursuer must go much further than that. He must aver that Tudhope was aiding and abetting the legal wrong of which he says Russell was guilty. I think, therefore, we must disallow the issues against Tudhope. And this makes the question regarding the two remaining issues more simple; and I should propose, if your Lordships should agree with me, that one issue should try the whole questions raised by the second and third issues, which would run in these terms:—"Whether on or about 8th March 1880 the pursuer was wrongfully apprehended at or near Coatbridge on an application at the instance of the defender Robert Russell against him as *in meditatione fugæ*, and was thereafter brought before the Sheriff-Substitute of Lanarkshire, at Airdrie, under the said application, and wrongfully

incarcerated in the prison of Airdrie on said 8th day of March, and detained there as a prisoner till the following day by virtue of a warrant granted by the said Sheriff-Substitute, to the loss, injury, and damage of the pursuer?"

Lord Deas—As regards the first issue I am entirely of the same opinion. What has been said against that issue merely affects the sum to be claimed under it. I understand that the only sum which can be claimed is the sum in the bill, and taking that view I entirely concur.

The next question relates to the two issues which have been stated against Tudhope. I am very clearly of opinion that he is not liable; as I took the liberty of mentioning in the course of the discussion—quoting Lord Justice-Clerk Hope—that those *fugæ* warrants are very ticklish things to deal with. I do not think for my own part, that even supposing Tudhope had known that Russell wanted to have the bill back for the mere purpose of giving out a *fugæ* warrant, that he was doing anything wrong. In place of being a reason why he should not give it back, it was rather a reason why he should. It was quite right that he should get rid of such a hazardous proceeding if he could. I cannot imagine any ground of action against Tudhope.

Then as to the second and third issues, I cannot see why they should not be one. I cannot see any interest which the pursuer has to have two issues. There are some cases in which there is wrongous apprehension merely and no imprisonment, or there may be a doubt about the one and not about the other. But to have two issues in the present case would be a mere abuse of words.

Lord Mure—I agree that the first issue is a good one, and I also think that the second and third issues should be combined. On the fourth issue, however, I have had considerable doubt. My first impression was that Tudhope had been acting in concert with Russell throughout in full knowledge of the previous proceedings, and if that had been distinctly averred I should have been of opinion that the fourth issue should be allowed. In the sixth article of the condescendence it is stated that Russell caused the pursuer to be apprehended on a *fugæ* warrant, and "in order to accomplish this the defender Tudhope gave facilities to the defender Russell by reinstating the latter in the possession of the bill which was founded on and produced in the proceedings." Then in condescendence eight it is set forth how he proceeded, after giving the bill to Russell, to get it back again and presenting it for payment. And in condescendence nine it is averred that the pursuer further believes and avers "that this was done by the said defender, and the whole of the proceedings *in meditatione fugæ* taken by Russell, most wrongously and maliciously, for the purpose of extorting money from the pursuer which he was not actually due—a circumstance known also to the other defender Tudhope, and to his law-agent, Mr Robert Muir, writer, Lanark, who also acted as agent for Russell." Finally, in condescendence eleven it is said that the "pursuer was, as the defenders well knew, or at all events as the defender Russell well knew, due nothing to them or either of them." Now, when I read these statements I was under the impression that Tudhope, though it was not very clearly averred, was throughout in the knowledge that these bills were accommodation bills. But I cannot now so read these averments. I am not prepared to differ.

On the fifth issue I have no difficulty. My objection applied only to the fourth issue.

Lord Shand—I am clearly of opinion that there is no relevant case here against Tudhope. I assume that Russell knew that he had no right to fill up the bill and put it in the circle, but as it is not alleged here that Tudhope was not an endorsee for value, I think he was entitled to do diligence on it. But Russell was also interested in diligence being done on it, because unless it was paid he would still be debtor in the £100 to Tudhope. In these circumstances I think that it is impossible to say that there is any case against Tudhope because he gave it back to Russell in the way alleged on record.

But I go further—even if Tudhope knew perfectly well about the bill I think he would not be liable. Russell got value for it, and he must either do diligence or give back the value. The mere circumstance that Tudhope knew that Russell was going to do diligence in a wrong way would not affect my opinion. Seeing that the *fugæ* proceedings were adopted by Russell in his own name on a bill which he was entitled to have in his own possession unless he gave Tudhope credit for £100. Whether Tudhope knew or did not know that the *meditatione fugæ* proceedings were to be adopted in the name of Russell has nothing to do with the use which Russell was to make of the bill.

In regard to the first issue I should myself have preferred that words limiting the damage to the contents of the bill should be added, but if your Lordships are satisfied that the issue may go to the jury in its present form I do not press my objection.

The Court disallowed the fourth and fifth issues, and altered the second and third in terms of the opinion of the Lord President.

Counsel for Pursuer (Respondent)—Dickson. Agents—J. & A. Hastie, S.S.C.

Counsel for Defenders (Reclaimers)—Guthrie Smith—Alison. Agent—T. F. Weir, S.S.C.

Friday, February 25.

SECOND DIVISION.

[Lord Rutherfurd Clark, Ordinary.

SHOTTS IRON CO. *v.* SIR GEORGE DEAS.

LA COUR & WATSON *v.* SHOTTS IRON CO.

Landlord and Tenant—Mineral Lease—Sterility—Agreement to Terminate Lease if Mineral found not worth Expense of Working.

A mineral lease for twenty-nine years at a fixed rent of £300 a-year contained a provision that if at any time during the lease it should be "judicially found," on a report by arbiters, that the mineral, "from no fault, ne-