direct it to be restored to its proper form by striking out the unauthorized additions which we now do."

WILL—CONSTRUCTION—"SURVIVING."

The Court of Appeal, in *Re Benn, Benn* v. *Benn*, 29 Chy. D. 839, were called on to determine the proper construction of a will whereby a testator devised to each of his children an estate for the life of that child, with remainder to the children of that child; and in case any or either of the testator's children should die without leaving any child or children, him, her or them surviving, then the estate to which their child or children respectively would have been entitled under the will if living, were devised to the testator's *surviving* children for their respective natural lives, and after their deceases their respective shares were devised to their respective children. There was no gift over on the death of all the testator's children without leaving issue. C., one of the testator's children, died without leaving issue. Some of the other children survived him, others had died leaving children living at C.'s death. The question was whether the brothers and sisters of C., who actually survived him, and their respective children were alone entitled to his share, or whether the children of the brothers and sisters who had predeceased him were also entitled to participate in it. Kay, J., held that the word "surviving" must be construed literally, and that therefore only the brothers and sisters who actually survived C. and their children were entitled, and this conclusion was confirmed by the Court of Appeal.

BILL OF EXCHANGE—SPECIFIC APPROPRIATION OF GOODS FOR PAYMENT OF BILL.

Brown v. *Kough*, 29 Chy. D. 848, to which we now come, is a decision of the Court of Appeal. The question involved in it is somewhat similar to that discussed in *Phelps* v. *Comber*, which we have noted *ante*, p. 349. A bill of exchange on its face contained a direction "to charge the same on account of cheese per *Britannic* and lard per *Greece* as advised;" the drawers, on the same day as the bill was dated wrote to the drawee a letter of advice enclosing bills of lading for the cheese and lard, and informing the drawee that as against these they had drawn on him in favour of the payee at sixty days' sight. The drawers having suspended payment the drawee refused to accept the bill; but on the arrival of the consignments in England the drawee took possession of, and realized them, and claimed to retain out of the proceeds a balance due on the general account between him and the drawers. The payee of the bill then brought the present action, claiming the right to be paid the amount of the bill out of the proceeds of the consignments, in priority to all other persons, on the ground that the bills of exchange amounted to a specific appropriation of the goods to meet the bill. But the Court of Appeal agreed with Chitty, J., that the bill had not that effect. Fry, L.J., quotes with approval the remark of Mellish, L.J., in *Rober* v. *Ollier*, L. R. 7 Chy. 699, where he says:—

"The indorsement of a bill gives only a right to the bill, and I do not think any mercantile man would suppose, because he saw in the bill the words 'which place to account of cargo A," that he was to have a lien on that cargo. A mercantile man who is intended to have a lien on a cargo expects to have the bill of lading annexed; if there is no bill of lading annexed, he only expects to get the security of the bill itself."

STATUTE OF LIMITATIONS—PAYMENT OF INTEREST—ENTRY AGAINST INTEREST.

Whatever may be thought of the morality of Statutes of Limitations, there can be no doubt they are sometimes made use of to defeat honest claims. *Newbould* v. *Smith*, 29 Chy. D. 883, is an instance of this. The action was brought in 1884 on two mortgages for foreclosure. The mortgagor set up the Statute of Limitations. As to one of the mortgages, which was by deposit, there was no evidence of payment of interest since 1866, except an entry in the books of the deceased mortgagee of £50, as paid in 1878 by the mortgagor as rent and interest, the mortgagor at that time having parted with his equity of redemption. As to the other mortgage, it was established that the solicitor for the mortgagor had paid interest to the mortgagee, and that it had been taken into account between the mortgagor and his solicitor up to 1866; and that from that time the solicitor continued to pay the interest, but no proof could be adduced that he acted as agent for the mortgagor, or that the latter had furnished the money. Upon this state of facts it was held by North, J., that the entry in the deceased mortgagee's books, though, as an acknowledgment of money received, it was against