business, touching so closely very dangerous ground, should take the consequences if they overstep the law. It may not be out of place to recall the striking language of Knight Bruce, V.C., in *Pearse* v. *Pearse* (1 De G. & S. 12, at p. 28), in reference to a somewhat similar subject. The question before him was the propriety of enforcing disclosure of communications between a client and his legal advisers. "The discovery and vindication and establishment of truth," His Honour says, "are main purposes certainly of the existence of courts of justice; still for the obtaining of these objects, which however valuable and important cannot be usefully pursued without moderation, cannot be either usefully or creditably pursued unfairly or gained by unfair means, not every channel is or ought to be open to them. . . . Truth, like all other good things, may be loved unwisely—may be pursued too keenly—may cost too much." And then he points out that the meanness and the mischief of prying into things which are regarded as confidential, with all the attending consequences, are "too great a price to pay for truth itself." It seems to their Lordships, following out this train of thought, that however convenient it may be to a trader to know all the secrets of his neighbour's position—his "standing," his "responsibility," and whatever else may be comprehended under the expression "et cetera"—yet, even so, accuracy of information may be bought too dearly—at least for the good of society in general. It is admitted that in this country there is no authority directly in point. There are direct authorities in the United States in favour of the conclusion at which the High Court has arrived. American authorities are no doubt entitled to the highest respect. But this is a question that must be decided by English law. In the dearth of English authority it seems to their Lordships that recourse must be had to the principle on which the law in England on this subject is founded. With the utmost deference to the learned Judges of the High Court, their Lordships are of opinion that the decision under appeal is not in accordance with that principle. Their Lordships will therefore humbly advise His Majesty that the orders appealed from should be discharged and the judgments of the High Court reversed, with costs in both courts, including the costs of the cross-appeals, and that any costs already paid by the appellants to the respondents should be repaid by the latter. The respondents will pay the costs of the appeal.

Appeal sustained.

Counsel for Appellants—Dickens, K.C.—J. A. Simon, K.C. Agents—Spyer & Sons, Solicitors.

Counsel for Respondents—Sir R. Finlay, K.C.—Wise, K.C. (of Colonial Bar). Agents—C. W. Dommett & Son, Solicitors.

HOUSE OF LORDS.

Tuesday, June 30, 1908.

(*Present*—The Lord Chancellor (Loreburn), Lords Macnaghten and Atkinson.)

LODGE HOLES COLLIERY COMPANY *v.* CORPORATION OF WEDNESBURY.

(On Appeal from the Court of Appeal in England.)

Reparation—Measure of Damages—Mines—Highway Subsidence—Restoration of Level.

Where the level of a road has been lowered by subsidence above a mine, the highway authority has no absolute right to restore the original level and recover the whole expense as damages without considering whether the road could be more cheaply restored at the new level so as to be equally commodious.

Appeal from a judgment of the Court of Appeal (Collins, M.R., Cozens-Hardy and Farwell, L.JJ.). The facts appear sufficiently from the opinion of the Lord Chancellor, pronounced after their Lordships had taken time for consideration.

Lord Chancellor (Loreburn)—This is an action by the local authority against mineowners whose workings have caused a road to subside, and there is no dispute except as to the amount of the damages. The local authority restored the level by an embankment and retaining walls at a cost of about £400, and the mineowners said that this was quite unnecessary, and that an equally commodious road could be made for £65 at the sunken level. They paid £80 into Court. Jelf, J., found this sum sufficient to make an equally commodious road, and so judgment was entered for the defendants. On appeal judgment was entered for the plaintiffs for £400. Now I think that a court of justice ought to be very slow in countenancing any attempt by a wrongdoer to make captious objections to the methods by which those whom he has injured have sought to repair the injury. When a road is let down, or land let down, those entitled to have it repaired find themselves saddled with a business which they did not seek, and for which they are not to blame. Errors of judgment may be committed in this as in other affairs of life. It would be intolerable if persons so situated could be called to account by the wrongdoer in a minute scrutiny of the expense, as though they were his agents, for any mistake or miscalculation, provided that they act honestly and reasonably. In judging whether they have acted reasonably, I think that a Court should be very indulgent and always bear in mind who was to blame. Accordingly, if the case of the plaintiffs had been that they had acted on the advice of competent advisers in the work of reparation, and had chosen the course which they were advised was necessary, it would go a very long way with me; it would go the whole way, unless it

became clear that some quite unreasonable course had been adopted. But when the proceedings at the trial, and the preceding correspondence, are examined, it appears that this was not the plaintiffs' contention at all. They did not, in fact, consider how they could make an equally commodious road without unnecessary expense. Their position was that they were in law entitled to raise the road to its old level, and to charge the defendants with the cost of so raising it. At the trial, as an afterthought, they also contended that the road would not, in fact, be so commodious to the public if it were made up on the lower level at the smaller cost. Jelf, J., states in terms that these were two contentions advanced, and this has not really been disputed. I regard the finding of Jelf, J., as conclusive on the question of fact. It has not been assailed, and if it were I need not repeat what has often been said of the advantages enjoyed by a Judge who has heard the witnesses. When a finding of fact rests upon the result of oral evidence it is in its weight hardly distinguishable from the verdict of a jury, except that a jury gives no reasons. The former practice of courts of equity arose from the fact that decisions often rested upon evidence on paper, of which an appellate court can judge as well as a court of first instance. The point of law which was advanced by the plaintiffs—viz., that they were entitled to raise the road to the old level cost what it might, and whether it was more commodious to the public or not—will not, in my opinion, bear investigation. Such a rule might lead to a ruinous and wholly unnecessary outlay. There is no authority for it, though there is authority to show that as between the owners of a public road and the adjacent lands the former may be entitled to restore the ancient level. Even those who have been wronged must act reasonably, however wide the latitude of discretion that is allowed to them within the bounds of reason. Accordingly, with the utmost respect to the Court of Appeal, I think that the judgment of Jelf, J., should be restored. The plaintiffs acted quite honestly, but under the mistaken belief that they were bound, or at least entitled, to maintain the ancient level at the defendants' expense. So thinking, they did not consider whether it was necessary to do so in the interests of the public, and did not exercise a discretion on that question, so far as appears from the evidence before us.

LORDS MACNAGHTEN and ATKINSON concurred.

Judgment appealed from reversed.

Counsel for Appellants—Sir R. Finlay, K.C.—Shearman K.C.—Disturnal. Agents—Bower, Cotton, & Bower, Solicitors, for Thursfield & Messiter, Wednesbury, Solicitors.

Counsel for Respondents—Macmorran, K.C. — Hugo Young, K.C. — M'Cardie. Agents—Sharpe, Pritchard & Company, Solicitors, for Thomas Jones, Town Clerk, Wednesbury.

HOUSE OF LORDS.

Friday, July 3, 1908.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, and Dunedin.)

OWNERS OF S.S. "KNUTSFORD" *v.* E. TILLMANS & COMPANY.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Ship—Bill of Lading—Exceptions—Error in Judgment—Inaccessible on Account of Ice—Deemed by the Master Unsafe—Construction—Ejusdem generis.

In the construction of exceptions in a bill of lading, *held* (1) that "error of judgment in navigating the ship or otherwise" does not cover the master's erroneous view of the ship's contractual duties; (2) that "inaccessible on account of ice" means inaccessible without inordinate delay, not merely three days; (3) that "unsafe in consequence of war disturbance or any other cause" does not include danger by perils of the sea.

The plaintiffs (respondents) were the holders and indorsees of bills of lading in respect of goods carried on the s.s. "Knutsford" belonging to the appellants. They asked for damages for breach of contract in failure to carry the goods to Vladivostock. The bills of lading contained the following exceptions—"(2) . . . *error in judgment*, negligence, or default of . . . master . . . whether in navigating the ship or otherwise . . .; (4) should a port be *inaccessible on account of ice*, . . . or should entry and discharge at a port be *deemed by the master unsafe* in consequence of war, disturbance, or any other cause, it shall be competent for the masters to discharge goods intended for such port on the ice or at some other safe port or place at the risk and expense of the shippers, consignees, or owners of the goods. . . ." The appellants relied upon the portions italicised.

The master of the "Knutsford" tried for three days to enter Vladivostock, but at that time it was impossible because of ice. He considered it unsafe to persist in the attempt owing to the ice and severe weather. He therefore left and discharged the goods at Nagasaki. The day after leaving the approach to Vladivostock the ice dispersed and entry became easy.

Judgment in favour of the plaintiffs was pronounced by CHANNELL, J., and affirmed by the Court of Appeal (VAUGHAN WILLIAMS, FARWELL, and KENNEDY, L.JJ.).

The defendants appealed.

At the conclusion of the arguments—

LORD CHANCELLOR (LOREBURN)—I am clearly of opinion that this judgment ought to be affirmed. What took place was this. A vessel went from Middlesborough to Japan to deliver most of her cargo, and then she was to go forward to Vladivostock. When she arrived within forty miles of Vladi-