syndicate for Mrs de Carrey was obtained from Rycroft by misrepresentation, the misrepresentation charged being that Mr Binns and Louch had represented that Mrs de Carrey had been acting for the syndicate all through the negotiations, whereas the syndicate or Louch had purchased the benefit of the agreement from her for a large sum. The Court, consisting of Finnemore and Beaumont, JJ., decided in favour of the respondents on both points, and by their judgment of the 29th May 1902 decreed specific performance of the agreement with costs. On the question of privity of contract, they seem to have held that a new contract on the terms of the old one had been made between the appellants and the respondents. The acts of part performance which were relied on by the learned judges as evidence of such new contract were the occupation and working of the land in question by the respondents, the expenditure of money on the faith of the agreement, and the acceptance by the appellants of the payment of £100 as a guarantee for prospecting operations. This sum, however (as already stated), was in fact paid before the incorporation of the respondents. Their Lordships do not think it necessary to say whether the agreement was or was not voidable on the grounds alleged or on other grounds appearing in the correspondence, because they are clearly of opinion that there was no contract between the appellants and the respondents. The contract was made with Mrs de Carrey, and even if she can be treated as having made it on behalf either of the unincorporated syndicate, who were the promoters of the respondent company, or on behalf of the company itself when incorporated, it is clear that a company cannot by adoption or ratification obtain the benefit of a contract purporting to have been made on its behalf before the company came into existence. It is unnecessary to cite all the cases in which this has been decided from *Kelner* v. *Baxter* (L. Rep. 2 C.P. 174) downwards. But the facts may show that a new contract was made with the company after its incorporation on the terms of the old contract. The circumstances relied on for that purpose in the present case are not in the opinion of their Lordships necessarily referable to, and do not necessarily imply a new contract with the respondents. But a conclusive reason which negatives any new contract is that Rycroft, by whose agency the new contract must be supposed to have been made, had no power or authority after the 31st January 1898 to make such a contract on behalf of the appellants, and his want of authority was known to the solicitors acting for the respondents. He was not either the actual or the ostensible agent for that purpose of the appellants. Their Lordships will therefore humbly advise His Majesty that the judgment of the 29th May 1902 ought to be reversed, and that instead thereof judgment ought to be given for the defendants in the action, with costs. The respondents will also pay the costs of this appeal.

Judgment appealed against reversed.

Counsel for the Plaintiffs and Respondents—Haldane, K.C. —Boydell Houghton. Agents—Budd, Johnsons, & Jecks.

Counsel for Defendants and Appellants—Danckwerts, K.C.—MacSwinney. Agents —Kimbers & Boatman.

HOUSE OF LORDS.

Tuesday, February 2.

(Before the Lord Chancellor (Halsbury) and Lords Macnaghten and Lindley.)

CORPORATION OF SHOREDITCH *v.* BULL.

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

Reparation—Road—Local Authority—Road Dangerous for Traffic—Street Properly Finished Getting into Unsafe Condition through Rain—Liability to the Public.

The corporation of a borough, who were both the sanitary and highway authority, laid down a sewer in a trench made by them in the centre of one of the streets of the borough, and thereafter filled up the trench and opened the street for traffic. Six days after the street was opened A was being driven home along the street at night in a hansom cab. The driver, finding the near side of the street soft, drove across to the off side and ran into a heap of rubbish which had been deposited there without the permission of the corporation. As a result the cab was overturned and A injured. In an action for damages brought by A against the corporation the jury at the trial found that the corporation had properly finished the road, but that after the road was opened the rain had spoiled the work, and that the road had become dangerous at the time of the accident.

Held that the corporation were liable in damages.

In the beginning of 1900 the Corporation of the Borough of Shoreditch, who were both the sewer and the highway authority for the borough, laid down a new sewer in a trench three feet wide made by them down the centre of Buttesland Street, which was twenty-four feet wide from kerb to kerb.

In April 1900 the work was finished in that part of Buttesland Street that lay between Great Chart Street and Pitfield Street, the trench was filled up, and the street was opened for traffic.

Fourteen days after the trench was filled up and six days after the street was opened, Mr Bull was being driven home at night in a hansom cab. The cab came down Great Chart Street, which lies at right angles to Buttesland Street and crossed the site of the trench to the near side of Buttesland Street. Tho driver, finding that the near side of the street felt soft, and thinking

that the off side might be better, drove across the site of the trench to the off side of the street. Shortly thereafter he drove into a heap of rubbish which had been improperly shot into the street close to the kerb by a carman not in the employment of the Corporation, and over whom they had no control, without their permission. As a result the cab was upset and Mr Bull injured. In respect of these injuries he brought an action against the corporation for damages.

The action was tried before DARLING, J., and a Jury on August 1, 1901. At the conclusion of the plaintiff's evidence the Judge gave judgment for the Corporation, holding that there was no evidence of misfeasance to go to a jury. On appeal the Court of Appeal on 14th December 1901 ordered a new trial.

The new trial took place in April 1902 before PHILLIMORE, J., and a jury. At the conclusion of the plaintiff's case the Judge intimated that he would have non-suited the plaintiff if it had not been for the decision of the Court of Appeal, but in view of that decision he would take the answers of the jury on certain questions.

The following questions were put to the jury, who returned the following answers:—1. Was the left half of the road down Buttesland Street from Great Chart Street to Pitfield Street dangerous to traffic?—Yes, sufficiently to warrant the driver in crossing from the near to the off side. 2. Was it the part which had been excavated, or the part to the left hand of that which had been excavated?—Both, but chiefly the trench. 3. Was the work properly finished by defendants after the trench was completed?—Yes, it was properly finished at the time, but rain had spoiled it. 4. Did the cabman go over to the off-side owing to the work not being properly finished?—Yes. The foreman of the jury—We do not intend to say that he went over to the off-side because the road was not properly finished, but that he went to the off-side on account of the state of the road. 5. Was the heap of rubbish put there by direction of the vestry or its servants?—No. 6. Was it put there by permission of the vestry or its servants?—No. The jury added as a rider that the road was properly finished, but had become dangerous in the six or seven days since it was open to traffic.

After argument the judge gave judgment for the defendants.

On appeal the Court of Appeal (COLLINS, M.R., and MATHEW, L.J., ROMER, L.J *dubitante*) reversed this decision and ordered judgment to be entered for the plaintiff.

The defendants appealed.

At the conclusion of the appellants' arguments their Lordships gave judgment without calling on counsel for the respondent.

LORD CHANCELLOR (HALSBURY)—I should be much grieved if any of the facts in this case were left so uncertain as to render it necessary for your Lordships to send it down for a third trial, the damages having been only to the extent of £50, and the expenses, I should think, already incurred in the two trials before coming to this House, amounting to a very considerable sum indeed, thrown upon the ratepayers. But I do not think that necessary, because I think that there is enough in the findings of the jury here to render it proper to affirm the judgment which has been given by the majority of the Court of Appeal. I am desirous of not going beyond the facts and findings in this case for more reasons than one, and among them, conspicuously, is the reason that I think that some propositions in respect to the non-liability of the surveyor, or the local board now representing the surveyor of highways, may be pressed too far. At the same time I wish to express no difference of view from that which has been expressed before in this House. When the question is raised in a direct form it may be worth while to consider whether or not that which has been described as an act of nonfeasance in several of the cases in which that proposition has been applied (I think a little too widely) may not be considered misfeasance; but it is enough for the present case to say that according to the authorities there is enough here to show that the act which was being done was an alteration of the normal condition of the road, and if there was anything wrong either in the mode of carrying out the work or in the period of time which was allowed to elapse between the opening of the road and its becoming firm, or if in any other way the thing that was being done was negligently done, or if there was evidence for the jury that it was negligently done within any of the decisions which have been cited to us, it was an act of misfeasance for which the local or road authority under whose authority the thing was done was responsible. I deprecate very much the notion that you can begin an operation which interferes with the ordinary and normal condition of the roads and then by reason of having different duties cast upon you you can treat that as a separate operation, so that at one point of time you may be responsible in one capacity or not responsible in one capacity and at another point of time you are, and you may hand over the completion of the operation to an authority which is not responsible at all. That would be a sort of metaphysical inquiry into which I am loth to enter. The person who alone could interfere with the structure of the road as it stood happens to be the person who is also responsible for the continuance of the road in a condition in which it shall not be permitted to be dangerous to the public; and in this case I absolutely decline to inquire at what particular point of time the liability as sewer authority ends and the liability as highway authority is supposed to begin. It is enough for me to say that the person sued was the person who interfered in the first instance with the ordinary structure and normal condition of the road, and that was an act—not an omission to do an act but an act—and

until the road was restored in its entirety to the proper and normal condition so that it could be properly and without undue risk traversed by the public at large, it seems to me that it would be idle to say that you could put your finger upon any particular point of time and say that the liability of the sewer authority began then and ended then, and then it was handed over to an authority which is not responsible for nonfeasance, and if that authority did nothing nobody is responsible at all. That is a process of reasoning to which I for one will not assent. The moment the structure of the road is interfered with, and it comes within the ambit of the operation commenced by the person who is entitled to interfere with the structure of the road, then until that road is restored into the condition in which it was before that alteration of its structure began it seems to me the person who interfered with it is responsible for a misfeasance. I do not deny that there is considerable difficulty in following the findings of the jury. For aught I know to the contrary the learned counsel who has last addressed us may be right in the conjecture which he has formed as to the influences which guided the jury in coming to their findings. I have nothing to do with that provided that the findings stand (and there is no application here and no desire, I should think, on either side for a new trial) and provided that the two learned Judges in the Court of Appeal are right in construing the findings as they have done, and, although I think that a different view might be entertained, I certainly do not feel myself able to differ from their interpretation of those findings. Under those circumstances it becomes an ordinary case of interference with the road, the non-return of it into its normal condition, and an accident happening in the course of events which but for that alteration in the normal condition of the road would not have happened. That seems to me, therefore, to be a sufficient chain of events to show that the person who interfered with the normal condition of the road is responsible for it until its return to a safe condition. It was not restored to the normal condition when the accident occured, and therefore I think that the plaintiff is entitled to maintain his verdict. Under those circumstances I move your Lordships that this appeal be dismissed with costs.

LORD MACNAGHTEN—I am of the same opinion. Notwithstanding the able argument which we have heard this morning, I think that what was done must be regarded as one operation and by one body. So regarding it, I think that there was more than nonfeasance; there was misfeasance. I agree that the judgment ought to be affirmed.

LORD LINDLEY—I am of the same opinion. I have no doubt myself, if you look at it broadly and without those subtle distinctions which have been suggested to us, that this is a case of misfeasance and not of nonfeasance. There were three breaches of duty, so far as I can make out, or at all events there were three acts done—not merely omissions. There was breaking up the road and putting it into such a state that it was not fit for traffic; there was restoring the road and not restoring it so as to be fit for traffic; and there was leaving the cartload of rubbish there which it was the duty of someone on the part of the defendants to clear away (I do not say an actionable duty), and that was not done. Three wrongs do not make one right. It is more than omission. It is not as if they left the road alone; they did nothing of the sort. They first began by putting it out of a proper state of repair, and they never put it back into a proper state of repair.

Judgment appealed against affirmed and appeal dismissed.

Counsel for Plaintiff and Respondent—Montague Lush, K.C.—E. Lewis Thomas. Agent—Graham Gordon.

Counsel for Defendants and Appellants—J. Eldon Bankes, K.C.—R. V. Bankes. Agent—H. Mansfield Robinson, Town Clerk of Shoreditch.

HOUSE OF LORDS.

Monday, February 15, 1904.

(Before the Lord Chancellor (Halsbury) and Lords Macnaghten, Shand, and Lindley.)

CORPORATION OF EASTBOURNE *v.* ATTORNEY-GENERAL.

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

Revenue — Stamp-Duty — "Property" — Duty Payable on Purchase of Property under Statutory Authority—Finance Act 1895 (58 *and* 59 *Vict. c.* 16), *sec.* 12.

Section 12 of the Finance Act 1895 enacts that where by virtue of an Act of Parliament any person is authorised to purchase property, he shall within three months after the completion of the purchase produce to the Commissioners of Inland Revenue an instrument of conveyance of the property duly stamped with the *ad valorem* duty payable upon a conveyance on sale of the property.

Held that the word "property" in this section includes both heritable and moveable property, and that duty is payable in respect of both.

Section 12 of the Finance Act 1895 enacts —"Where after the passing of this Act, by virtue of any Act, whether passed before or after this Act, either (*a*) any property is vested by way of sale in any person or (*b*) any person is authorised to purchase property, such person shall within three months after the passing of the Act or the date of vesting, whichever is later, or after