

as to any matter of pleading or procedure, unless, in the opinion of the Court to which the application is made, after an examination of the entire cause, the error complained of has resulted in a miscarriage of justice.

SURFACE SUPPORT.

The right of owners of the surface of lands under which there are mines, to have the surface in its natural condition supported, was the subject of a recent case in West Virginia, where in it was held that a grant of the coal underlying land, with the right to "excavate and remove all of said coal," left in the surface proprietors no right to claim subjacent support: *Griffin v. Fairmont Coal Co.*, 53 S.E. Rep. 24. The right to subjacent support was the subject of examination in the English House of Lords in May last in *Butterknowle Colliery Co. v. Bishop Auckland Industrial Co-Op. Soc.* (1906), A.C. 367, 94 L.T. Rep. 795. The Lord Chancellor, Lord Loreburn, thus summarizes the rules of construction to be applied to deeds which are to convey away the right of support: "Whenever the minerals belong to one person and the surface to another, the law presumes that the surface owner has a right to support, unless the language of the instrument regulating their rights or other evidence clearly shews the contrary. In order to exclude a right of support the language used must convey unequivocally that intention, either by express words or by necessary implication. For the same presumption in favour of a right of support which regulates the rights of parties in the absence of an instrument defining them will apply also in construing the instrument when it is produced. If the introduction of a clause to the effect that the mines must be worked so as not to let down the surface would not create an inconsistency with the actual clauses of the instrument, then it means that the surface cannot be let down. Illustrations are numerous in the reports. Words, however wide, that merely authorize the getting of all the minerals have been held not to authorize so getting them as to let down the surface.