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Judgment
21/1964

IN THE PRIVY COUNCIL

No. 21 of 1961

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF THE WEST INDIES APPELLATE JURISDICTION, TRINIDAD

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
22 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

BETWEEN:

ALBERT JAMES MAURITZEN trading
as A.J. Mauritzen & Co.
(Plaintiff) Appellant

78591

- and -

10 GORDON GRANT AND COMPANY
LIMITED (Defendant) Respondent

CASE FOR THE RESPONDENT

1. This is an Appeal from the Judgment of the Federal Supreme Court of the West Indies (Appellate Jurisdiction : Trinidad and Tobago) dated the 2nd November 1960 allowing in part the appeal of the Appellant from the Judgment and Order of the Supreme Court of Trinidad and Tobago (Phillips. J.) dated the 30th September 1959 dismissing the Appellant's claim and giving judgment for the Respondent on the counterclaim. The Federal Supreme Court varied the decision of the Trial Judge by awarding to the Appellant \$100 damages for nuisance.

2. The Appellant was the monthly tenant of the Respondent in respect of an office on the first floor of a building known and assessed as Nos. 2 and 4 St. Vincent Street, Port of Spain. There were other tenants of the building, part of which as well as the building next door was occupied by the Respondent. The Appellant's office was approached by a stairway used in common with other occupants of the building and then by a balcony protected at the side by a parapet wall and balustrade and windows and overhead by a roof. The Appellant's

Judgments
p.p. 79-82.
p.p. 107-9.

<p>Ex A1 and A2, p.145</p>	<p>tenancy was subject to the provisions of the Rent Restriction Ordinance (Ch.27 No. 18). On the 11th September 1958 a windstorm caused severe damage to the building. On the 30th September 1958 the Respondent informed the Appellant that it would be uneconomical to repair the building and accordingly gave the Appellant one month's notice to quit, at the end of which period the Appellant became a statutory tenant. On the 4th October 1958</p>	<p>10</p>
<p>Ex A5 and A6, p.147, l.23, p.148, l.16.</p>	<p>the City Engineer served a demolition notice on the Respondent under the Port of Spain Corporation Ordinance, a copy of which the Respondent served on the Appellant on the 7th October 1958. On the 13th November 1958 the Respondent commenced ejectment proceedings against the Appellant. On the 9th December 1958 the Respondent informed the Appellant that certain parts of the building were in imminent danger of falling and that</p>	<p>20</p>
<p>p.4, l.33.</p>	<p>immediate steps were being taken to remove the worst of these dangers. By this time all the tenants except the Appellant had given up possession. The Respondent carried out certain works of demolition as a result of which on the 4th February 1959 the Appellant commenced THE PRESENT SUIT by a Writ of Summons claiming relief by way of declaration and injunction and also damages for :-</p>	<p>30</p>
<p>Ex A10, p.151, l.18.</p>	<p>(1) wrongful removal of his balustrade and windows and of the stairway and gallery giving access to his office;</p> <p>(2) trespass;</p> <p>(3) nuisance;</p> <p>(4) breach of covenant of quiet enjoyment.</p>	<p>40</p>
<p>p.1.</p>	<p>3. In Paragraph 4 of his Statement of Claim the Appellant particularised the matters of which he complained and which were conveniently summarised by the Trial Judge in the following passage :-</p>	<p>40</p>
<p>p.3, l.19.</p>	<p>" (a) Nuisance from dust, dirt and noise resulting from the demolition work done on portions of the premises not occupied by the Plaintiff.</p>	<p></p>
<p>pp. 4-7</p>	<p></p>	<p></p>
<p>p.82, l.38.</p>	<p></p>	<p></p>

(b) Removal of the roof over the stairway used by the Plaintiff as a means of access to the demised premises, and the erection of a roofless stairway alleged to be not as convenient as the original stairway.

10 (c) Removal of windows and of the balustrade supporting the windows of the portion of the balcony on the western side of the demised premises. "

4. By its Defence and Counterclaim the Respondent pleaded the notice to quit and the demolition notice and alleged that the matters complained of in the said notice had been since the windstorm a danger to the public and to the occupiers of the building and that in pursuance of the demolition order it had removed part of the roof, parapet wall and balcony and all the balustrade and windows and erected a temporary balustrade along the remaining portion of the balcony. The Respondent counterclaimed possession of the portion of the premises occupied by the Appellant. By his Reply and Defence to Counterclaim the Appellant denied that his tenancy had been determined by notice to quit or that the demolition notice referred to any part of the premises occupied by the Appellant or that the danger alleged in the Defence existed or that any of the matters alleged in the Defence constituted any answer to the Appellant's claim.

pp. 7-9

pp. 9-10

5. The trial lasted for 9 days between the 2nd and the 12th March 1959, evidence being called on both sides and judgment reserved. Judgment was delivered on the 30th September 1959.

Evidence
pp. 11-78.

Judgment
p.79.

6. As to the claim for damages for nuisance, the Trial Judge found as a fact that for somewhat more than a month after commencement of the demolition work there was a considerable amount of dust and noise which caused a great deal of inconvenience and discomfort, that the

p.83, 1.31.

p.84, 1.17. number of husks thrown into the Appellant's premises by the Respondent's coffee hulling machine on the ground floor was increased as a result of the demolition work and that this aggravated situation was continuing up to the date of trial, and that the Respondent had taken steps to reduce the inconvenience from noise and dust by putting up a row of galvanized sheets which were removed after about a month when the noise and dust resulting from the demolition work were very much less than before. After reviewing the authorities, particularly those relating to temporary necessary annoyances, the Trial Judge held that the Appellant's allegations of discomfort and inconvenience arising from dust and noise were not such as to give rise to an actionable nuisance. 10

p.84, 1.27.

p.88, 1.9.

7. As to the Appellant's complaints about the change of stairway giving access to his premises, it was not alleged that the Appellant had been deprived of access and the Trial Judge, after pointing out that the new stairway was in some respects more convenient than the old and after referring to Phelps v. London Corporation (1916) 2 Ch. 255 and the cases cited therein, found as a fact that the circumstances were not such as to found a claim either for breach of covenant for quiet enjoyment or for nuisance. 20

p.88, 1.37.

p.90, 1.37.

8. As to the Appellant's complaint about the removal of the balustrade and windows from the portion of the balcony forming part of the demised premises, the Trial Judge found as a fact that their condition after the windstorm constituted a danger to passers-by as well as to persons entering the demised premises. It was not in dispute that the tenancy agreement, which was oral, contained no express terms with regard to repairs or the right of the landlord to enter for the purpose of doing repairs and the Trial Judge held on the authority of Mint v. Good (1950) 2 A.E.R. 1159 and the authorities cited therein that the Respondent had an implied right to enter for the purpose of carrying out the work in question. 30

p.91, 1.34.

p.91, 1.44. -
p.94, 1.40.

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9. As to the Respondent's counterclaim for possession, the Appellant did not dispute the notice to quit and the Trial Judge found as a fact that consequent upon an inspection of the premises made by a representative of the City Engineer a demolition notice dated the 4th October 1958 was served upon the Respondent in relation to the premises. Section 14 (1) (1) of the Rent Restriction Ordinance provides that no order or judgment for the recovery of possession of any premises to which the Ordinance applies or for the ejection of a tenant therefrom shall be made or given unless the building (inter alia) -

p.80, l.40.

p.121, l.12.

"is required by law to be demolished".

This Section contains the further requirement that the Court must be satisfied that it is reasonable in the circumstances to make the order.

Section 14 (3) of the same Ordinance provides as follows :-

p.100, l.1.

"Nothing in this Ordinance shall prevent the making of an order for the ejection of any person where, in the opinion of the Court asked to make the order, the ejection is expedient in the interest of public health or public safety ".

Section 208 (2) of the Port-of-Spain Corporation Ordinance is as follows :-

p.120, l.28.

"Where any structure within the City shall be deemed by the City Engineer to be ruinous or so far dilapidated as thereby to have become and to be unfit for use or occupation, or to be from any cause whatever in a structural condition dangerous or prejudicial to the property in, or the inhabitants of, the neighbourhood, the City Engineer may give notice in writing to the owner of such structure requiring him forthwith to take down, secure, repair, or rebuild the same, or any

part thereof, or to fence in the ground on which such structure stands, or otherwise to put the same in a state of good repair, as the case may require, to the satisfaction of the City Engineer, within a time to be specified in such notice".

- p.121, 1.1. Subsection (4) provides that in default of compliance with the notice within the time specified the Corporation "may make complaint thereof before the Magistrate, and it shall be lawful for such Magistrate to order the owner to carry out the requirements of such notice within a time to be fixed by him in such order". Subsection (5) provides a penalty for non-compliance with the Magistrate's order and authorises the Corporation to enter upon the premises and execute the order. 10
- p.96, 1.32. 10. It was sought by the Appellant to challenge the validity of the demolition order on the ground that the premises were not in fact in a dangerous condition, but it was conceded by the Appellant that the Trial Judge was bound by the decision of the Full Court of the Supreme Court of Trinidad and Tobago in Lalchan Pooran v. Kuar Singh and others (No. 164 of 1958) to the effect that in proceedings between landlord and tenant it is not open to the tenant to challenge the facts on which a demolition notice served by the City Engineer on the landlord was founded. However, the Trial Judge not only found as a fact that the premises were in a dangerous condition and that for the purpose of Section 14 (1) of the Rent Restriction Ordinance it was reasonable in this case to make a possession order but also found under Section 14 (3) that it was expedient in the interest of public safety that such an order should be made. In considering the latter Section he expressly accepted the evidence given for the Respondent as against that given for the Appellant and found as a fact that the building (and particularly the roof and balcony) was rendered dangerous as a result of the windstorm. 30
- p.91, 1.34.
- p.99, 1.37.
- p.100, 1.29.
- p.100, 1.21. 40

10 11. The Trial Judge also rejected, it is submitted rightly, the contentions that the demolition notice was invalid because it described the premises as No. 2 St. Vincent Street whereas the building is known and assessed as Nos. 2 and 4 St. Vincent Street; because it did not expressly state that the building was "deemed" by the City Engineer to be dangerous; and because it only required the Respondent to "take down" part of the building and was therefore not a requirement for the building "to be demolished" within the meaning of Section 14 (1) of the Rent Restriction Ordinance. p.96, 1.40 - p.98, 1.20.

20 12. On the 10th November 1959 the Appellant gave notice of appeal to the Federal Supreme Court. The hearing of the appeal lasted 4 days between the 11th and the 14th October 1960. Judgment was given on the 2nd November 1960, the principal judgment being delivered by Lewis J., Halliman C.J. and Marnan J. agreeing. p.104. Judgment, p.107. p.126, 1.32.

13. The grounds on which the appeal was argued are set out in the Federal Supreme Court Judgment as follows :-

- 30 " (1) that the City Engineer's notice of the 4th October, 1958, did not relate to the demised premises; p.110, 1.18.
- (2) that the City Engineer had abandoned his notice before the demolition work commenced and the notice was therefore not subsisting at the material time;
- (3) that the removal of the balustrade enclosing the balcony and the windows therein constituted a trespass and/or a breach of the covenant for quiet enjoyment.
- 40 (4) that the disturbance caused by the entry of coffee husks into the Plaintiff's office resulting from the removal of the eastern wall constituted an actionable nuisance; and
- (5) that the order for possession was

wrongly made because

(a) the City Engineer's notice did not fall within the meaning of the expression "required by law" and S.14 (1) (1) of the Rent Restriction Ordinance and

(b) the dangerous condition of the remaining portion of the building which existed at the time that the trial judge made his order was due to the wrongful acts of the Respondent in lowering the roof of the building." 10

p.111, l.18.

14. As to ground (1) the Federal Supreme Court agreed with the Trial Judge that the "slight misdescription" of the address of the premises did not vitiate the notice.

p.111, l.34.

As to ground (2) the Court held that the City Engineer had not abandoned the demolition notice merely by giving the Respondent time to comply with it, which the Respondent had said that it would do. 20

p.112, l.11.

As to ground (3) the Court expressly agreed with the Trial Judge's finding of fact that the balustrade was in a dangerous condition and also agreed in holding that under the terms of the tenancy the Respondent had a right of entry for the purpose of effecting repairs.

p.115, l.40.

p.118, l.12.
p.119, l.45.

As to ground (4) the Court upheld the Trial Judge's findings on the allegation of nuisance caused by the dust of demolition, but decided that the Appellant had made out an actionable case of nuisance arising from the operations of the Respondent's coffee hulling machine and awarded the Appellant \$100 damages under this head. The Respondent does not seek to controvert this decision. 30

p.123, l.10.

15. As to ground (5) which related to the Respondent's counterclaim for possession, the Federal Supreme Court held that in the expression "required by law" for the purposes of the Ordinances in question the word "law" 40

included a notice containing a requirement issued by a public authority in the exercise of a statutory power, that the notice derived mandatory authority from the Ordinance although it must be enforced by an order of the Magistrate, and that Pooran's case was rightly decided.

p.125, l.14.

p.125, l.25.

10 Further, the Court expressly concurred with the Trial Judge's finding of fact that the premises were in a dangerous condition and with his findings that it was reasonable to make an order for possession both under Section 14 (1) and under Section 14 (3) of the Rent Restriction Ordinance.

p.126,l.4.

p.126,l.16.

16. On the 21st November 1960 the Appellant petitioned the Federal Supreme Court for leave to appeal to Her Majesty in Council and by a majority Judgment dated the 18th January 1961 such leave was granted. By Order dated the 3rd May 1961 the Appellant was granted final leave to appeal to Her Majesty in Council.

p.128.

p.134.

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p.143.

17. The Respondent humbly submits that the Appeal of the Appellant should be dismissed and that the Appellant should be ordered to pay the costs thereof and that the Judgment of the Federal Supreme Court of the West Indies should be affirmed for the following, amongst other

30 R E A S O N S

(1) BECAUSE there are concurrent findings of fact in favour of the Respondent.

(2) BECAUSE the Courts below have correctly construed the meaning and effect of the provisions of the Rent Restriction Ordinance and the Port of Spain Corporation Ordinance in relation to the facts and circumstances of this suit.

40 (3) BECAUSE there are no grounds for impeaching the validity of the demolition notice.

(4) BECAUSE the Respondent was entitled to enter the premises occupied by the

Appellant for the purpose of carrying out the works required by the demolition notice.

- (5) BECAUSE both the Courts below rightly exercised their discretion in holding that a possession order should be made under Section 14 (1) and/or under Section 14 (3) of the Rent Restriction Ordinance.
- (6) BECAUSE the Judgments of both the Courts below on all questions relating to this appeal are correct for the reasons given therein.

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JOSEPH DEAN.

No. 21 of 1961

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF THE
WEST INDIES APPELLATE JURISDICTION,
TRINIDAD

BETWEEN:

ALBERT JAMES MAURITZEN trading as A.
J. Mauritzen & Co. (Plaintiff)
Appellant

- and -

GORDON GRANT AND COMPANY LIMITED
(Defendant)
Respondent

CASE FOR THE RESPONDENT

J.N. MASON & CO.,
41-44 Temple Chambers,
Temple Avenue,
E.C.4.