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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

B E T W E E N:

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

- and -

GORDON GRANT AND COMPANY LIMITED (Defendant) Respondent

R E C O R D O F P R O C E E D I N G S

MAPLES TEESDALE & CO.,
6, Frederick's Place,
Old Jewry, E.C.2.
Solicitors for the Appellant.

J.N. Mason & Co.,
41-44, Temple Chambers,
Temple Avenue, E.C.4.
Solicitors for the Respondent.

IN THE PRIVY COUNCIL No. 21 of 1961

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

B E T W E E N:

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

- and -

GORDON GRANT AND COMPANY LIMITED
(Defendant) Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S.

LIST OF EXHIBITS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT REPRODUCED.

Exhibit Mark	Description of Document	Date
B.2.	Photograph	
D.	Specimen of dust and coffee hunks from desk of plaintiff's office (NOT TRANSMITTED)	
E.1 to E.4 (inclusive)	Photographs showing barricade.	
F.2 to F.4 (inclusive)	Photographs.	
H.2.	Photograph.	
H.5.	Photograph showing scene on afternoon of incident.	
I.	Specimen of Hy-Ribbed metal (NOT TRANSMITTED)	

Exhibit Mark	Description of Document	Date
J.1.	Photograph showing damage done to Planning and Housing building.	
J.2.	Photograph showing damage done to another building on Marine Square.	
M.	Plan of Section of Port of Spain City Sheet A. 20. N.	
N.	Engineer's plan of structure at northern end of Nos.2 & 4 St. Vincent Street.	27th February 1959

LIST OF DOCUMENTS OMITTED FROM THE RECORD BY CONSENT OF THE SOLICITORS FOR THE PARTIES.

Description of Document	Date
IN THE SUPREME COURT OF TRINIDAD AND TOBAGO	
Summons issued by the Plaintiff.	
Exhibits to Affidavit of George Charles Howden.	
Exhibit to Affidavit of Plaintiff.	
Affidavit of George Charles Howden and exhibits thereto.	
Notice to produce for cross-examination.	
Entry of Action for trial.	
IN THE FEDERAL SUPREME COURT	
Notice of Motion by the Plaintiff-Appellant for final leave to appeal to Her Majesty in Council	17th April 1961
Affidavit of Anthony Hamel-Smith in support thereof.	17th April 1961

LIST OF DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
Affidavit of Plaintiff	5th February 1959
Affidavit of George Charles Howden (without exhibits)	12th February 1959
Affidavit of William Ackelesberg	11th February 1959
Affidavit of Plaintiff (without exhibit)	18th February 1959
Order of the Federal Supreme Court	2nd November 1960
Order granting conditional leave to appeal to Her Majesty in Council	18th January 1961
Bond for costs on Appeal	12th April 1961

IN THE PRIVY COUNCIL No. 21 of 1961

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

B E T W E E N:

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

- and -

GORDON GRANT AND COMPANY LIMITED (Defendant) Respondent

RECORD OF PROCEEDINGS

In the Supreme Court

No. 1

No. 1

WRIT OF SUMMONS

Writ of Summons.

4th February, 1959.

M. HAMEL-SMITH & CO.
Solicitors, Conveyancers
and Notaries Public.

TRINIDAD (Writ of Summons)

IN THE SUPREME COURT OF TRINIDAD & TOBAGO

No. 107 of 1959

BETWEEN

ALBERT JAMES MAURITZEN trading as A.J. MAURITZEN & CO. Plaintiff

- and -

GORDON GRANT & COMPANY LIMITED Defendant

ELIZABETH II, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To Gordon Grant & Company Limited,
6, St. Vincent Street,
Port of Spain.

In the Supreme Court

No. 1

Writ of Summons.

4th February, 1959

- continued.

We command you, that within Eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Supreme Court, Port of Spain in an action at the suit of Albert James Mauritzen trading as A.J. Mauritzen & Co. and take notice that in default of your so doing, the Plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS: The Honourable Sir Stanley E. Gomes, Kt., Chief Justice of our said Court at Port of Spain, in the said Island of Trinidad, this 4th day of February 1959.

N.B. This Writ is to be served within Twelve Calendar Months from the date thereof, or if renewed within Six Calendar Months, from the date of the last renewal including the day of such date and not afterwards.

The Defendant may appear hereto by entering an appearance either personally or by Solicitor at the Registrar's Office at the Court House, in the City of Port of Spain.

The Plaintiff Claim is: against the Defendant for:-

1. A declaration that the Plaintiff is a tenant and entitled to possession of a portion of the first floor of premises No. 4 St. Vincent Street, Port of Spain, of which the Defendant is the landlord and that such portion of the premises extends to the balustrade at the western end of such building;

2. A declaration that the Plaintiff is entitled to the use of the passageway and stairway leading from St. Vincent Street aforesaid to the first floor of the said premises;

3. A declaration that the Plaintiff is entitled to the use of the gallery along the western side of the said premises from the head of the said stairway to the entrance of the premises occupied by him;

4. An injunction restraining the Defendant their contractors, servants and/or agents and/or workmen and each of them from trespassing or from carrying out further demolitions or acting so as to cause a nuisance to or interfere with the peaceful and quiet enjoyment by the

Plaintiff of All that portion of the premises occupied by the Plaintiff situate in the City of Port of Spain in the Island of Trinidad and known and assessed as No. 4 St. Vincent Street together with the appurtenances thereto belonging which said premises are within the provisions of the Rent Restriction Ordinance Chapter 27 No. 18;

5. A mandatory injunction requiring the Defendant to restore to its proper condition the balustrade and windows at the western extremity of the premises occupied by the Plaintiff, to replace the portion of the stairway from the ground floor to the first floor of the premises and the galvanized iron roof thereto and the portion of the gallery leading from the said stairway to the portion of the premises occupied by the Plaintiff;

6. Damages for wrongfully removing the balustrade and windows at the western extremity of the premises occupied by the Plaintiff and for wrongfully removing the said stairway and gallery;

7. Damages for trespass;

8. Damages for nuisance;

9. Damages for breach of covenant for quiet enjoyment;

10. Costs.

11. Such further and/or other relief as the nature of the case may require.

This writ was issued by Messrs. M. HAMEL-SMITH & CO., of No. 19, St. Vincent Street, Port of Spain (and whose address for service is the same), Solicitors for the said Plaintiff, who is a Customs and Freight forwarding Agent and resides at No. 66 Ellerslie Park, Maraval, in the Ward of Diego Martin in the Island of Trinidad.

M. HAMEL-SMITH & CO.,
Plaintiffs Solicitors.

In the Supreme Court

No. 2

Statement of Claim.

4th February, 1959

No. 2

STATEMENT OF CLAIM

TRINIDAD

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO

No. 107 of 1959

BETWEEN

ALBERT JAMES MAURITZEN trading as A.J. MAURITZEN & CO. Plaintiff

- and -

GORDON GRANT & COMPANY LIMITED Defendant

STATEMENT OF CLAIM of the above-named Plaintiff delivered with the Writ of Summons issued herein on the 4th day of February, 1959, by his Solicitors, Messrs. M. Hamel-Smith & Company, of No.19, St. Vincent Street, Port of Spain.

M. HAMEL-SMITH & CO.
Plaintiff's Solicitors.

1. The Plaintiff is a Customs and Freight Forwarding Agent carrying on business on a portion of the first floor of premises known as No. 4 St. Vincent Street in the City of Port of Spain in the Island of Trinidad, of which he has been in possession as a tenant of the Defendant since the month of July, 1954, at a rental of $44.00 per month and to the quiet enjoyment of which he is entitled. The said premises are within the provisions of the Rent Restriction Ordinance Chapter 27 No. 18

2. The Defendant is a Limited Liability Company having its registered office at No. 6 St. Vincent Street in the said City and Island and has since the month of July 1954 been the landlord of the Plaintiff.

3. On the 13th day of November, 1958 the Defendant through its agent George Howden commenced ejectment proceedings against the Plaintiff for possession of the said premises occupied by him as aforesaid and on the said ejectment matter coming on for hearing on the 3rd of December, 1958 the matter was adjourned to the 9th day of March, 1959.

4. The Defendant by its servants and/or agents unlawfully and in breach of its implied covenant for quiet enjoyment:-

(a) on or about the 11th of December, 1958 removed the windows on the Western side of the premises occupied by the Plaintiff;

(b) on or about the 13th day of December, 1958 commenced demolition work on the first floor of the said premises adjoining the portion occupied by the Plaintiff and as a result dust and dirt have been constantly entering the premises occupied by the Plaintiff and the Plaintiff has been greatly disturbed by noise;

(c) On or about the 20th day of December, 1958 removed the roof over the stairway by which the Plaintiff had access to the said premises rented by the Plaintiff;

(d) on or about the 23rd day of December 1958 erected galvanized iron sheets along the side of the premises occupied by the Plaintiff to try to prevent the dust and dirt from entering the said premises but removed the said galvanized iron sheets on or about the 29th of January 1959 and as a result all the dust and dirt created by the work of demolition and by the operation of the Defendant's coffee huller downstairs of the said premises occupied by the Plaintiff.

(e) on or about the 10th or 11th day of January, 1959 blocked the stairway by which the Plaintiff had access to the premises occupied by the Plaintiff and erected another temporary stairway without any roof thereto;

(f) on or about the 24th or 25th day of January, 1959 removed portions of the floor of the gallery by which the Plaintiff had previously had access to the said premises rented by the Plaintiff;

(g) on or about the said 24th or 25th day of January removed the balustrade at the western end of the premises which the Plaintiff actually occupies and removed the sign board bearing the name of the Plaintiff's firm.

5. And the Defendant continues to commit acts of

In the Supreme Court

No. 2

Statement of Claim.

4th February, 1959

- continued.

trespass and to interfere with the Plaintiff's rights under the tenancy and intends unless restrained to continue similar acts of trespass and/or interference.

6. By reason of the foregoing the Plaintiff has experienced great difficulty in carrying on his business of a Customs and Freight Forwarding Agent and is thereby much damnified.

The Plaintiff claims:-

1. A declaration that the Plaintiff is a tenant and entitled to possession of a portion of the first floor of premises No. 4 St. Vincent Street, Port of Spain, of which the Defendant is the landlord and that such portion of the premises extends to the balustrade at the Western end of such building;

2. A declaration that the Plaintiff is entitled to the use of the passageway and stairway leading from St. Vincent Street aforesaid to the first floor of the said premises;

3. A declaration that the Plaintiff is entitled to the use of the gallery along the Western side of the said premises from the head of the said stairway to the entrance of the premises occupied by him.

4. An injunction restraining the Defendant their contractors, servants and/or agents and/or workmen and each of them from trespassing or from carrying out further demolitions or acting so as to cause a nuisance to or interfere with the peaceful and quiet enjoyment by the Plaintiff of All that portion of the premises occupied by the plaintiff situate in the City of Port of Spain in the Island of Trinidad and known and assessed as No.4 St.Vincent Street together with the appurtenances thereto belonging which said premises are within the provisions of the Rent Restriction Ordinance Chapter 27 No.18;

5. A mandatory injunction requiring the Defendant to restore to its proper condition the balustrade and windows at the Western extremity of the premises occupied by the Plaintiff, to replace the portion of the stairway from the

ground floor to the first floor of the premises and the galvanized iron roof thereto and the portion of the gallery leading from the said stairway to the portion of the premises occupied by the Plaintiff.

6. Damages for wrongfully removing the balustrade and windows at the Western extremity of the premises occupied by the Plaintiff and for wrongfully removing the said stairway and gallery;

7. Damages for trespass;

8. Damages for nuisance;

9. Damages for breach of covenant for quiet enjoyment;

10. Costs.

11. Such further and/or other relief as the nature of the case may require.

R. HAMEL SMITH
Of Counsel.

No. 3

DEFENCE AND COUNTERCLAIM

TRINIDAD

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO

No. 107 of 1959

BETWEEN

ALBERT JAMES MAURITZEN trading as A.J. MAURITZEN & CO. Plaintiff

- and -

GORDON GRANT AND COMPANY LIMITED Defendants

DEFENCE AND COUNTERCLAIM

DEFENCE

1. The Defendants admit paragraphs 1 and 2 of the

In the Supreme Court

No. 3

Defence and Counterclaim.

12th February, 1959

- continued.

Statement of Claim and say that the portion of premises let to the Plaintiff comprises a room approximately 19 feet by 50 feet at the northernmost end of the first floor thereof and includes the portion of the balcony over the St.Vincent Street footway, immediately opposite the said room.

2. On the 11th day of September 1958 the whole of the Defendants' premises at No. 4 St.Vincent Street including the portion occupied by the Plaintiff was severely damaged by high winds.

3. On the 30th day of September 1958 the Defendants served upon the Plaintiff notice to quit and deliver up his said portion of the premises which notice expired on the 31st day of October 1958.

4. By a notice dated the 4th day of October 1958 under section 208 (2) of the Port of Spain Corporation Ordinance Chapter 39 No.1 the City Engineer of the said Corporation required the Defendants to take down the roof and the parapet wall along the southern and western sides of the said premises and the balcony thereon over the footways on South Quay and St. Vincent Street within 30 days of the said notice. The matters complained of in the said notice have since the said 11th day of September 1958 been a danger to the public and the occupiers of the said premises.

5. The Defendants admit paragraph 3 of the Statement of Claim and further state that on the 29th day of January 1959 another complaint was made under the Summary Ejectment Ordinance against the Plaintiff for the possession of his said portion of the premises and the summons therefor has been served on the Plaintiff for hearing on the 13th day of February 1959.

6. In pursuance of the said demolition order the Defendants have inter alia removed the roof and the parapet wall of the said premises up to sixteen feet and twelve feet respectively south of the Plaintiff's said portion and a portion of the balcony over the St. Vincent Street footway up to a point twenty-seven feet from the Northern end of the said premises and all the balustrade and window frames along the said balcony. The Defendants have erected a temporary balustrade along the edge of the said remaining portion of the balcony.

7. Save as expressly admitted herein the Defendants

deny all the allegations of fact contained in paragraph 4 to 6 of the Statement of Claim as if the same were herein set out and traversed seriatim.

8. Further or in the alternative the Defendants say that the Statement of Claim discloses no cause of action in respect of the matters complained of in sub-paragraphs (c) (e) and (f) of paragraph 4.

COUNTERCLAIM

9. The Defendants repeat paragraphs 2 to 6 hereof and say that in spite of the said notice to quit and the dangerous condition of the Plaintiff's said portion the Plaintiff has refused and continues to refuse to deliver up the same.

10. And the Defendants counterclaim for possession of the portion of the said premises occupied by the Plaintiff.

E.H. HAMEL WELLS
Of Counsel.

DELIVERED on the 12th day of February 1959 by Messrs. J.D. Sellier and Co. of 13 St. Vincent Street, Port of Spain, Solicitors for the Defendants.

J.D. SELLIER & CO.
Defendants' Solicitors.

No. 4

REPLY AND DEFENCE TO COUNTERCLAIM

TRINIDAD

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO

No. 107 of 1959

BETWEEN

ALBERT JAMES MAURITZEN trading as A.J. MAURITZEN & CO. Plaintiff

- and -

GORDON GRANT & COMPANY LIMITED Defendant

REPLY AND DEFENCE TO COUNTERCLAIM

1. The Plaintiff joins issue with the Defendant upon its Defence.

In the Supreme Court

No. 4

Reply and Defence to Counterclaim.

19th February, 1959

- continued.

AS TO THE COUNTERCLAIM

2. The Plaintiff repeats paragraphs 1 and 2 of the Statement of Claim and further says that the Defendant is not entitled to possession of the premises occupied by him.

3. The Plaintiff further denies that his said tenancy was determined by the alleged notice of the 30th September, 1958 or at all.

4. The Plaintiff also denies that the City Engineer by the alleged notice of the 4th day of October, 1958 or at all made any order for the demolition of any part of the premises comprised in the Plaintiff's said tenancy or that the alleged dangers referred to in paragraph 4 of the Defence exist. If any such do exist (which is denied) the same was caused by and/or principally due to the acts and/or omissions of the Defendant itself, its servants and/or agents.

5. The Plaintiff does not admit the service of any complaint other than that referred to in paragraph 3 of the Statement of Claim.

6. The Plaintiff will contend that none of the matters alleged in paragraphs 4 and 6 of the Defence constitutes any answer to his claim herein.

7. Save as expressly admitted herein the Plaintiff denies each and every allegation of fact contained in the counterclaim as if the same were herein specifically set forth and traversed.

R.P. HAMEL-SMITH
of Counsel.

DELIVERED the 19th day of February, 1959, by Messrs. M. Hamel-Smith & Co., of No.19, St. Vincent Street, Port of Spain, Solicitors for the Plaintiff.

M. HAMEL-SMITH & CO.
Plaintiff's Solicitors.

No. 5

In the Supreme Court

No. 5

Judge's Notes.

Counsel for Plaintiff.

2nd March, 1959.

JUDGE'S NOTES OF PROCEEDINGS AND EVIDENCE AT TRIAL

TRINIDAD

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO

No.107 of 1959

BETWEEN

ALBERT JAMES MAURITZEN trading as A.J. MAURITZEN & CO. Plaintiff

- and -

GORDON GRANT AND COMPANY LTD. Defendant

JUDGE'S NOTES OF EVIDENCE

Monday 2nd March, 1959

J.A. Wharton, Q.C. (R.P. Hamel-Smith with him) for the plaintiff

M.J. Butt, Q.C. (E.H. Wells with him) for the defendant. Wharton asks for amendment in para.4(a) of Statement of Claim. Substitutes January 1959 for December 1958. (No objection by Butt Q.C.) Amendment allowed.

Wharton opens:

Access to plaintiff's premises by means of staircase. Plaintiff in possession of room and gallery. Gallery was partitioned off on north and south. Plaintiff used gallery to accommodate persons coming to him on business.

Structure of gallery is cantilever beam supported by brackets. Main part of building is of thick masonry reinforced in part by railway rails. Main Walls of considerable mass run north and south sides of building. Main walls continue up to columns. Partitioning of first floor by wooden partition. Columns about 2 feet square. On top of that are the roof trusses. Over plaintiff's main office there is a ceiling - gallery close boarded.

In the Supreme Court

No. 5

Judge's Notes.

Counsel for Plaintiff.

2nd March, 1959

- continued.

Roof itself is a steel truss roof. Steel girders and trusses with some wooden struts unceiled but covered with galvanized iron.

Roof a gable roof, gallery lean to. Parapet wall about 30 inches high at junction of main part of roof with gallery running all along the building on St. Vincent Street side. Behind the parapet wall guttering to take off the storm water.

The effective structure of the gallery was of steel beams.

Plaintiff a tenant at $44 per month rent.

On 11th September 1958 there was a windstorm about Port of Spain around 1 p.m. a Thursday.

Defendants are owners of a continuous line of premises numbered 2, 4, 6 and 8 St. Vincent Street. Occupies entire premises of No.6 - ground floor - first floor. Ground floor of No.4 is also occupied by the defendants. They store things. Defendant occupied northernmost part of first floor. Immediately south of plaintiff was premises occupied by Atlantic Traders, then one Ahing - Automobile Association - Escala and Navarro and anor.

Question of effect of windstorm will be a matter for consideration. Burden will be on the defence to show that the effect of the windstorm was such as to give rise to a reasonable requirement for possession. Ejectment summonses are issued in December 1958, January 1959.

On the afternoon of the 11th September 1958 the plaintiff and some other tenants of the defendant spoke to two of the Directors of the defendant Company, Commander Bushe and Major Howden. They (or one or other of them) told the plaintiff that they would restore the damage to the premises but that first things first. The defendants themselves occupied No.6 which is of different structure from No.4 No.6had slate roof, it also suffered damage.

The defendants began work of clearing and repairing No.6 the same day and completed the work within about 2 weeks - roof completely restored - changed from slate to galvanized iron. Since then entire building of No.6 has been re-roofed in slate. No repair work was done at all to any part of the premises owned by the defendants south of No.6.

About 9th and 10th December, 1959, defendants began demolishing the building at Nos.2 and 4 i.e. the first floor except for the plaintiff's premises and a little portion of the floor south of the plaintiff.

Since commencement of this action defendants have cut off the columns and are building a roof about 9 feet lower than the original roof of Nos.2 and 4. Defendants over a week-end broke down the balustrade of the gallery and took off the windows. (Most of the gallery roof was blown away, glass louvres broken by the wind.) Defendants took away plaintiff's sign.

Removal of roof exposed plaintiff's staircase. Defendants put up a temporary staircase to replace the one they demolished. This staircase is uncovered. Plaintiff continued to make requests to the defendant who continued to avoid the issue.

On 30th September, 1958 defendants wrote letter to plaintiff (1).

Notice to quit dated 30th September, 1958 (2).

This letter of 30th September 1958 was first intimation that defendants did not intend to do any repairs.

Letter from defendant to plaintiff of 3/10/58 (3).

Letter from defendant to plaintiff of 3/10/58 (4).

Letter from defendant to plaintiff of 7/10/58 (5).

Notice from City Engineer dated 4/10/58 (6).

(a) is disputed by plaintiff.

(b) no dispute as to cracks but wall could easily be repaired.

(c) this is disputed.

It is for defendant to show that this was a proper requirement under section 208 (2).

(N.B. sec.208 (2) Consequence of sec.208(4). Failure to comply with notice.)

In the Supreme Court

No. 5

Judge's Notes.

Counsel for Plaintiff.

2nd March, 1959

- continued.

Letter by plaintiff to defendants 31/10/58 (7).

Letter by defendant's solicitors to plaintiff 7/11/58 (8).

Letter by plaintiff to defendant's solicitors 10/11/58 (9).

Letter by defendants to plaintiff 9/12/58 (10).

Letter by plaintiff's solicitors to defendant's solicitors 17/12/58 (11).

Letter by defendant's solicitors to plaintiff's solicitors 17/12/58 (12).

Letter by plaintiff's solicitors to defendant's solicitors 22/12/58 (13).

Letter by defendant's solicitors to plaintiff's solicitors 23/12/58 (14).

Letter by plaintiff to defendants 23/12/58 (15).

Letter by defendant to plaintiff 2/1/59 (16).

Luncheon Adjournment.

Court resumes at 1.30 p.m.

Re issues raised on pleadings. Dispute as to effects of the storm on the building.

Submit that re City Engineer's notice, onus on defendants to satisfy Court as to the contents of the notice.

By consent photos put in and marked B1, 2 and 3.

Lavender v. Betts, (1942) 2 All E.R.72. Submit mere service of notice by City Engineer is no legal justification for a trespass. Landlord must prove that the premises are required by law to be demolished.

Woodfall on Landlord and Tenant 24th Edition (1939) p.785.

Cockburn v. Smith, (1926) 2 K.B.119, p.635, 637.

Booth v. Thompson (1923) Ch. 397.

In the Supreme Court

No. 5

Judge's Notes.

Counsel for Plaintiff.

2nd March, 1959

- continued.

Dooknee Harrysingh vs. Standard Distributors Ltd., Judgment of Supreme Court dated 22/1/58.

Para.6 of the Defence admits facts which amount to a trespass unless justified by the Defence.

Plaintiff says the storm did a certain amount of damage, this damage did not create a danger at all in respect of the plaintiff's premises - No.4 St. Vincent Street probably not in respect of No.2.

In so far as there was any danger to the public, the remedy was simple and could have been carried out quite easily by the defendants.

Facts show that defendants were intent on taking advantage of the storm to get the plaintiff out.

It may be said that landlord is under no liability to repair in absence of express agreement.

Where landlord is himself in occupation of a part of the premises, he is under liability to repair portion in his occupation if it is a danger to the tenant or if it constitutes a disturbance of the tenant's quiet enjoyment.

Submit - landlord retains possession of the whole of the roof of No.4.

23 Halsbury's Laws (3rd Edition) p.562 para. 1232.

PLAINTIFF'S EVIDENCE

Plaintiff's Evidence

No. 6

No. 6

EVIDENCE OF ALBERT JAMES MAURITZEN

Evidence of Albert James Mauritzen.

Examination.

ALBERT JAMES MAURITZEN sworn states:

I live at Ellerslie Park, Maraval. I carry on business at 4 St. Vincent Street as a Customs and Freight Forwarding Agent under the style of A.J. Mauritzen and Company.

I have been the tenant of the defendant company in respect of certain premises since 1950. I then occupied the premises immediately south of the

In the Supreme Court

Plaintiff's Evidence

No. 6

Evidence of Albert James Mauritzen.

Examination - continued.

present premises. I became the tenant of the present premises in July, 1954.

On Thursday 11th September there was a windstorm - they call it a freak wind - about 1 p.m.

The defendants are the owners of the block of buildings between South Quay and Marine Square, Port of Spain. I occupy the northernmost portion of No. 4 St. Vincent Street which adjoins No.6, occupied by the defendants as their main place of business.

I was in San Fernando at the time of the storm. I heard of it on the Radio. I returned about 2.30 p.m. I rushed straight to my office. The roof of the gallery has been blown away and the greater part of the glass louvres had been blown out. The place was covered with debris, and broken glass, it was in a pretty bad mess.

My premises consisted of a single office which I partitioned myself. There were a number of things broken, there was a hole in the gallery floor and a hole in the office floor.

A beam came down smashed my counter and made a hole in the office floor - the centre of the office.

The gallery on St. Vincent Street was part of the premises of which I was a tenant. It was used by a subsidiary company of mine. There was actually a desk in it occupied by one of my clerks. This is the part of the office to which the public went.

Sketch of premises admitted by consent and marked 'C'.

Two offices south of mine i.e. Trinidad Automobile Association and Escala and Navarro were also affected. They also occupied a part of the gallery. The gallery roof was also damaged.

I occupied no part of No.2 St.Vincent Street.

I believe I saw Commander Bushe and Major Howden two of the defendant Company's directors on the Saturday 13th September, 1958. I asked them what was happening. I believe Commander Bushe replied "First things first". They were already repairing their own premises. I believe from the

first afternoon they had people on the roof. I was completely under the impression that as soon as they had done their own they would do ours.

I spoke to Major Howden at least a couple of times after. I asked him what was happening about it. He replied nothing was decided about it "First things first".

Nothing whatsoever was done to the premises. No debris was removed. Water spouts were leaking on to the gallery. The guttering behind the parapet wall was blocked with debris. The water was falling on the gallery. I repaired my spouting. The debris in the guttering was removed about the beginning of February, after the demolition work.

After the storm the roof had gone from the gallery, only the frame along the balustrade was left and three windows. The glass louvre windows were blown out, the frames were left. The balustrade is merely a retaining wall for the windows.

The rafters rested on the frame. They were gone. The balustrade was about 3 feet high. The glass louvres were put up about a couple years ago. I don't believe I spoke to Commander Bushe after the 13th September, 1958.

The rear part of the roof of the main office was leaking badly - the portion over the toilets and wash basins. This fact was brought to the attention of the defendants.

One day when most of the other people had moved or were moving Major Howden came up and asked me how I was getting on; he asked me if I had found any place. I said "No". This must have been early November.

I put 2½ big sheets to keep out the rain. This was on the western side on St.Vincent Street. I put up the frontage.

This photograph B.1 was taken on the 7th January 1959.

In B.2 the balustrade is gone - also the remaining windows. The windows were removed one weekend. The following weekend the balustrade was taken out. I think that the windows were removed on the week-end of the 10th - 12th January and a

In the Supreme Court

Plaintiff's Evidence

No. 6

Evidence of Albert James Mauritzen.

Examination - continued.

week or two later the balustrade went out.

At no time was I asked if anyone could enter my premises. I came down on a Monday morning and found these things done. The Sheets I put up were of reinforced plywood.

About the 20th December, 1958, and thereafter - before and after Christmas demolition work was going on, long wooden planks were dropped from one end. There was bound to be noise, plenty of dust. At a certain stage they demolished the main pillars of the building with sledges, pickaxes down to about 3 feet from the first floor level. Dust and dirt entered my place and covered my papers. This continued for over a month, much more than a month.

I did not bring it to the knowledge of the defendants. I spoke to Mr. Ackelsberg he was in charge of the demolitions. I think I also spoke to Mr. Howden once.

The noise was so bad that if one was speaking on the telephone you would have to wait till the noise finished before the listener could hear what you were saying.

The dust got on your papers. If you dusted at 8 a.m. you would be dusting again at 9 a.m. Old paint and old wood would be full of dust. This sort of disturbance continued daily.

I believe I spoke to Mr. Howden about this. I can't be sure about it. I spoke to Mr.Ackelsberg about this about 2 or 3 times at the site where the work was being done.

I never phoned Ackelsberg to complain about dust or dirt only as this was so obvious. I said to him "What are you doing about this dust", he said, "There is bound to be a certain amount of dust".

He put up a row of galvanized sheets over the slats on the southern side of my premises to dull the noise and to prevent the dust coming in. They remained there for about a month or so and were taken down. The noise and dust were very much less at that stage.

The removal of the eastern wall on the southern side of my premises caused the coffee husks to enter

my premises. This was always a nuisance but became worse.

This was the result of the demolition of the main wall on the eastern side. This is still continuing.

Tuesday 3rd March 1959

ALBERT JAMES MAURITZEN, (continuing in examination-in-chief to Wharton Q.C.)

The beam I referred to as falling during the wind-storm was of wood. It was about 2" x 4" or 2" x 6". I think it was the centre beam holding the roof of the gallery. It was lengthways not a cross beam. It was the length of the gallery. I believe 18 feet.

This morning 3rd March, 1959 the nuisance from the coffee husks was worse. I have a sample of the stuff blown on a desk in my office. I took this off a desk in my office about 9.30 a.m. after the dust had been removed about 8.20 a.m. by the office boy. I took this off from the exposed surface of the desk itself. There was a typewriter on the desk also a telephone. The desk is 37" x 25".

There is nothing in the office that is not affected. Any page you take up is covered with it. It goes into typewriters and everything. I had to put out of use an electric calculator machine because it was getting filled with this stuff about 6 weeks or two months ago. There was an access door on the pavement to my premises and the Automobile Association. There was a small hallway then you turned left upstairs came to the landing and turned left again to go to the second half of the stairs.

This staircase was within the building itself, not exposed, each side was boarded off - there were also handrails.

At the entrance downstairs there is now a warning sign re the condition of the gallery. There was a barricade put up which blocked the entrance to my doorway downstairs. This was sometime in January, 1959.

These four photos were taken on the 7th January 1959. They show the barricade I have spoken about.

In the Supreme Court

Plaintiff's Evidence

No. 6

Evidence of Albert James Mauritzen.

Examination - continued.

Photos put in by consent and marked E.1 - 4.

The first half of the staircase has not been touched. At the half way landing I now turn right instead of left and go up a new staircase - it's about two-thirds the size of the old one. It has no handrails, one side is boarded up - the side that was open to the floor below. The other side is about 4 inches from the wall, there is an open window space on this side approximately 1 square foot in area. It is completely uncovered i.e. open to the sky.

The storm had no effect on the structure of the stairway. This is a photo showing the position of new stairway. Photo was taken about 20th or 22nd of February - F.1. This is a photo taken from my doorway looking northwest and shows the temporary balustrade, F.3.

Photo F.1 shows two pieces of scantling projecting into the well of the stairway. There are some large nails protruding. This photo shows the temporary balustrade inside of premises. Put in and marked F.4.

One support holds up the balustrade - the other holds up the original partition. When the roof blew off it tore up the cement off the parapet. The gallery part of my office could easily have been repaired. I had no obligation to maintain the roof or do any repairs to it.

The defendants had a woman come in once a month to clean the staircase etc., they did repairs to the toilet also painting.

After the storm all the tenants were left without electricity. We still are.

Cross-examination.

Cross-examined Butt:

I pay $44 per month rent for the premises. In my opinion there was no reason why all the damage done by the storm could not have been repaired.

I am not a builder, nor an engineer. I have never built any premises under my supervision. I am not in a position to estimate the cost of the notional repairs I have in mind. I have given it a thought. I am not in a position to give any competent answer as to the cost of repairs to the whole

premises because I am not a builder. The same applies in relation to the premises occupied by me.

Question: Would you be surprised to hear that the cost of repairing the storm damage to the whole building would be about $30,000?

Answer: Yes, because from what I saw with my own eyes and what I have been told by a Civil Engineer who has examined the premises on my behalf.

I got a Civil Engineer to examine my premises and what could be seen of the other portion from my premises. This was about January.

My Engineer came to examine the premises but required permission from the defendants to examine the whole premises before he could give me a report upon them. He did not get permission and could not do so.

Question: Would you be surprised to know that the total rent per month the defendants get for the whole building is $300?

Answer: No, the exact figure is $309 per month.

As far as the whole building is concerned I would not say very serious damage was done by the storm the damage to the whole building (Nos.2, 4, St. Vincent Street) was not considerable.

Premises known as Nos. 2-4 consist of one building. No.6 is a separate building. I believe that Nos.2-4 are assessed and rated as one entity.

My office was open yesterday. I employ one office boy and one clerk. Both were at work yesterday. They are there this morning. They have been there all the time apart from Sundays, Public Holidays etc.

It might have been early in January that I took away the electric calculator. It could not be used because there was no electricity. I had covered it in case of rain coming through. The cover was a heavy water proofed paper. The calculator was in an open book case. It was covered to prevent rain getting on it. The cover would not have prevented dust getting into it.

In the Supreme Court

Plaintiff's Evidence

No. 6

Evidence of Albert James Mauritzen.

Cross-examination - continued.

I should imagine it was about early January that I first noticed dust from the coffee huller. There has always been a certain amount of dust from the coffee huller from ever since the huller was put in some years ago. The huller operates off and on - sometimes not for 2 - 3 weeks. The dust comes through the space left by the removal of the eastern wall. Before that the dust was not too bad. It is the taking down of the wall that allowed the dust to come to me.

Witness referred to photos E.1 to 4. E.3 shows the way in which the pavement has been barred off, thereby cutting off access to the bottom of my staircase. There is an opening left in the barricade slightly south of the entrance to the staircase. It is intended as a means of access to the building. The purpose of the barricade is to prevent people walking along the pavement under the gallery. I don't consider it dangerous. Witness referred to letter A (13).

I don't consider the balustrade was dangerous. I consider the fencing off of the pavement necessary on account of debris, etc. falling. I don't complain of that.

I consider the entrance over the pavement too small and badly placed. Anyone passing by in a car would think that Mauritzen's business is closed.

I put up notices "A.J. Mauritzen & Co. open above", also another down below "Business as usual". Unless someone were on foot he probably would not see it.

On arrival at first landing of stairway, instead of going to the left you go to the right and come near to my entrance.

The new staircase is not a patch on the old one, it has no handrails, no cover, and collects all the dust and debris from the roof.

Passing by the old staircase I would come out at the gallery further south and would have to walk along the roofless gallery to get to my premises. I knew that the defendants had received a notice from the City Engineer to pull down the gallery.

I did not complain about the boarding up of the pavement downstairs. I spoke to the foreman in

charge of the work, one Bleasdell, about it. I asked him about it whenever I saw him for 4 - 5 days. Finally I spoke to Mr. Ackelsberg who had the entrance changed and put immediately in front of the doorway. At present I have no complaint. The barricade has been cleared away after I complained to the Public Health Authorities.

I complained about the staircase to Ackelsberg about a day or two after it was put in. I found it in on the Monday morning. He said the other staircase was no use - he was carrying out instructions in putting in this staircase instead. I believe he also told me they were pulling down the roof to a lower level. From what I saw, it was necessary to remove the staircase if the roof were to be lowered.

I asked Ackelsberg what's happening to my place. He said, "We will cut a door in your wall", i.e. after the gallery came down. This would have been a reasonable arrangement if the gallery had come down. I did not demur to it. It was the defendants place and they could do as they liked with it. I did not tell him or anyone else representing the defendant Company that I did not consent to it. I was not asked. Moreover, Ackelsberg was always saying that he was only acting on instructions. I spoke to Ackelsberg about early January a few days after the staircase was put up. I made no protest myself to the defendant Company. I reported this to my solicitors.

Luncheon adjournment.

Court resumes at 1.30 p.m.

Witness referred to photo F.1.

I never complained about the two projecting pieces of wood nor about the two nails. Witness referred to F.4. One piece of wood supports the partition. Witness referred to B.1. It shows the top gallery and my section of it before the removal of balustrade and windows by the defendant Company.

Question: If balustrade and windows had not been taken down, what would you have done to prevent the rain coming in.

Answer: I put up a frontage of plywood sheets the Saturday after the storm.
B.2. shows the gallery with my frontage.
Witness referred to B.3. B.1. shows on the extreme left of the gallery, the balustrade and the windows.

In the Supreme Court

Plaintiff's Evidence

No. .6

Evidence of Albert James Mauritzen.

Cross-examination - continued.

B.2. was taken after removal of the balustrade and windows, it does not show the frontage.

B.3 shows the frontage, which I put up a couple days after the storm.

The balustrade and windows were removed after I had put up the frontage.

This was completely open to the elements. I had to do something about it. I did no other construction work after the removal of the balustrade and windows. No one interfered with the frontage. All my personal effects were behind the frontage.

The balustrade and windows were removed a week-end. I don't know how they took the balustrade down. Witness shown B.1. The balustrade is a continuous structure from the northern end along St.Vincent Street. The windows were on top of the balustrade.

Question: My instructions are that on one day during the week the contractor Ackelsberg, went through your door with the leave of someone on your premises, removed the empty window panes and took them away?

Answer: Yes.

After that the windows were removed and then the balustrade both at week-ends, I believe different weekends. The whole balustrade was removed during a weekend. Every time something really annoying happened, it happened during a week-end. I don't know in what way the balustrade was removed.

The number of my premises is 2 and 4 St.Vincent Street.

I believe I saw Commander Bushe and Major Howden on the 13th September. I am certain I met them together. I wouldn't like to be bound by the date. It must have been within a week. I saw them both together. I am sure about that.

Question: Would it surprise you to hear that Major Howden was out of the Colony at that time?

Answer: It would surprise me.

I wouldn't like to swear to it that the persons to whom I spoke were Commander Bushe and Major Howden. I spoke to two directors and I have a

strong feeling that I spoke to Commander Bushe in the presence of Major Howden.

Apart from removal of balustrade and windows, I am not aware that the defendant Company trespassed inside my premises. I believe the beam that fell ran lengthways and not cross-wise. This is what caused the hole that allowed the water to run.

I did not make a formal complaint to the Company about the removal of the balustrade. As far as I know my solicitors immediately took out an injunction or something. I think the balustrade was taken down about the week-end of the 23rd January, 1959.

I made no formal complaint to the Company about the dust and noise of the demolition operations. I did speak to Mr. Ackelsberg about the mess, the rubble. If he didn't hear it must have been on account of the noise going on. I couldn't say whether he heard or not.

The main complaint I made to Mr. Ackelsberg was about the barricade. The last time I spoke to him was in connection with the dropping of a piece of cement. I don't think I spoke to him about the removal of the balustrade.

Question: Mr. Bleasdell instructs me that you told him that you had no intention of giving up possession unless you got alternate accommodation?

Answer: That's quite correct.

I did not bring these proceedings because I was faced with the prospect of being ejected.

Witness referred to correspondence 'A'.

I know that all the other tenants gave up possession. The defendant Company stopped its operations short of my premises apart from the removal of the balustrade and windows.

I had been asked to quit and rather than having a lot of inconvenience going to court and so I was prepared to remove if I could find another suitable place.

It is not true that later I sought to make use of the condition of the premises in order to resist an order for possession.

In the Supreme Court

Plaintiff's Evidence

No. 6

Evidence of Albert James Mauritzen.

Re-examination.

Re-examined Wharton:

I had made an application for an injunction in interlocutory proceedings. Certain affidavits were filed, one by Mr. Ackelsberg.

My old letter heads are addressed 2/4 St. Vincent Street. I am still using them. It was during my occupation of former premises next door to the south that these letter heads were printed.

I receive receipts from the defendant Company for payment of rent. Receipts put in and marked G.1 and 2.

I have been conducting my business up to now from 8 a.m. to 4.15 p.m. There was never any communication to me by the defendant of its intention to demolish any part of the building so far as it affected my portion of the premises.

I never agreed to the defendant removing any part of my premises. I was never asked. I was never given any notice that the stairway was going to be removed.

I and two other men shook the balustrade in my premises and further along. It did not budge. I, Mr. Escala, Mr. Wilson. We tried it at two points at my portion of the premises outside.

My office had a ceiling also the others, the ceiling was removed from the building other than my part, the main roof was removed south of my part. I wouldn't like to swear whether the balustrade is of wood or concrete.

My Writ was filed on the 4th February, 1959. I had given instructions to my solicitors about a week or 10 days before. I did so because I thought the limit had come. It had nothing to do with the ejectment proceedings.

The taking down of the balustrade is what made me mad, the last straw that broke the camel's back. This was about the week-end of the 23rd - 24th January 1959. That is what finally drove me to this action.

I swore to an affidavit in the morning and the same afternoon they started putting back the balustrade. The empty frames which the defendant asked

permission to remove were the frames from the glass louvres.

I knew Commander Bushe and Major Howden before the incident.

I have no doubt that Mr. Ackelsberg was quite aware of my discomfort caused by the noise and dust.

In one of my letters I asked the defendant to give me accommodation in another portion of their premises. That had been my hope all day. The offices themselves had not been in use. They were previously tenanted by Masons Ltd.

Adjourned 4th March, 1959.

In the Supreme Court

Plaintiff's Evidence

No. 6

Evidence of Albert James Mauritzen.

Re-examination - continued.

No. 7

EVIDENCE OF CHRISTOPHER SEEBARAN

Wednesday 4th March, 1959

CHRISTOPHER SEEBARAN, sworn states:

I am a Customs Clerk employed by the firm of Mauritzen and Company since February, 1958. I was so employed on the 11th September 1958. On that day I returned to the office about 1.45 p.m. after the windstorm. The windstorm was at sometime between 12.30 and 1 p.m.

Witness shown 5 photographs. Put in by consent and marked H.1 to 5. (Wharton states that these photos were taken on the day of the storm).

H.1 shows the corner of the building at South Quay and St. Vincent Street.

H.2 shows more of the building on St. Vincent Street.

H.3 shows Mr. Mauritzen's Office and a portion of the defendant's premises at No.6 St. Vincent Street i.e. where the men are standing.

H.4 shows part of the premises occupied by the Trinidad Automobile Association looking north along the gallery.

No. 7

Evidence of Christopher Seebaran.

Examination.

In the Supreme Court

Plaintiff's Evidence

No. 7

Evidence of Christopher Seebaran.

Examination - continued.

H.5 shows a part of the premises occupied by the Trinidad Automobile Association taken further north than H.4.

H.3 was not taken on the same afternoon of the storm. The broken louvres were not taken down the same afternoon.

H.3 shows that 2 side panels of louvres of Mauritzen's premises were not damaged.

H.1 shows that damage to glass louvres on south side of building was slight. 10

The balustrade shown in H.5 is of wood and concrete.

On the day of the storm I saw Major Howden and another short stout gentleman upstairs. They went right through the building. They came to the verandah of the office and spoke to us - i.e. myself and another clerk.

Mr. Mauritzen came and met them there - right near the entrance of our office.

Major Howden spoke to us. He asked us to 20 please remove any glass hanging over the balustrade. There were quite a few pieces hanging over.

They left our office and went further south along the verandah. When they spoke to us Mr. Mauritzen was not there. Mr. Mauritzen arrived some time after 3 p.m. They had spoken to us about 10 - 15 minutes before.

Firemen came the same day and removed a portion of the overhanging glass.

I am quite sure that Major Howden came to the 30 premises and spoke to us.

After the day of the storm he came up to the office frequently. He came to the verandah on the day after the storm, and the day after that. He did not come to our office. He was alone on both these occasions.

I don't know Commander Bushe.

Cross-examination.

Cross-examined Butt:

I am quite sure I know Major Howden. I am

quite certain I saw him on the day of the storm. (Major Howden is called into Court). That is Major Howden.

I am quite sure I saw him on the 11th, 12th and 13th September last. I have no doubt about it at all.

I had known him for some months before - for at least two months before. After that I saw him again regularly - I suppose during the month of September.

I don't know who the other gentleman with him on the 11th was. He was a short, stout gentleman. I don't know Commander Bushe or Mr. Bushe of Gordon Grant.

Major Howden and the other gentleman spoke to Mr. Mauritzen on the day of the storm. He met them there when he arrived. There were other people along the verandah at the time he came up. He met Major Howden about a yard away from the entrance to the office. I was in the verandah inside our office. The plaintiff spoke to Major Howden before he had spoken to any of his clerk. I left them on the verandah and went to our office.

Later Mr. Mauritzen came in. In the office were Mr. Mauritzen, another clerk and myself. He had a conversation. We didn't discuss Major Howden at all - not at that time. I can't remember exactly whether we spoke about Maj r Howden on that day. The other clerk told Mr. Mauritzen what Major Howden had said about the hanging glass. Part of the glass louvres was taken down by firemen from the building including our office.

(Witness referred to B.1 - indicates spot from which he alleges they took away glass.)

Witness refers to H.3 - firemen took away the broken louvres in middle.

After the storm the other tenants left the premises. I can't say how long after. We were the only tenants upstairs. Sometimes we would shut up the door downstairs. After the other tenants left we were not always the last people to leave. We had a key for the door downstairs. When workmen were there we would leave the door open. They would shut it. Sometimes we would shut it. In the morning one of us would open it. We could lock up the

In the Supreme Court

Plaintiff's Evidence

No. 7

Evidence of Christopher Seebaran.

Cross-examination - continued.

door leading to our part of the gallery. We would put up the frontage in place.

I know that Gordon Grant lowered the roof of the southern part of the building.

I know they abandoned a portion of the staircase and built another staircase. We landed from the new staircase next to Mr. Mauritzen's premises

There is always a lot of rubble about the staircase and the verandah also - caused by the breaking down of the building. I could go up and down the staircase with difficulty - caused by presence of pieces of plank and concrete.

After the storm plenty of water came into the premises - a lot of it through the roof. One part was worse than the other - the northern side. The roof was leaking badly. We had to soak up the water with bags. We pushed it out on the verandah and soaked it up with bags. We moved everything from that part of the office when it rained.

Part of the floor of the verandah, also part of the floor of the main office was broken. There was a big plank right across the office - blown in. I don't know from exactly where. Part of the water seeped through. We didn't push it through deliberately. Whenever it rained that part of the floor was covered with water.

Re-examination.

Re-examined Wharton:

I said that after the roof on the southern side was lowered we could not use the old staircase again. Before the roof was lowered we had to use the old staircase, it was the only one we had.

I don't know what made the hole in the verandah floor. The hole in the inner floor was about 3 inches in diameter. In the gallery a piece of flooring about 1 foot long and about 2½ inches wide was depressed.

Witness referred to F.1.

There are two bits of wood projecting over the well of the staircase. They are still there. The top one projects approximately 1 foot. Everytime you go up the staircase you have to walk to the right. The staircase is approximately 3 feet wide.

Case for plaintiff

Butt proposes to call evidence. Wharton requests that expert witness whom he intends to call be allowed to remain in Court. No objection by Butt. Leave granted.

DEFENDANT'S EVIDENCE

No. 8

EVIDENCE OF ARTHUR DUDLEY MOORE

ARTHUR DUDLEY MOORE, sworn states:

I live at Ferndale Terrace, St. Ann's. I am a partner of Mence and Moore, a firm of Architects practising here. I am a L.M. of the R.I.B.A. I have been an Architect since 1930. The repair of buildings comes within my duties as an Architect.

(Butt states that he does not wish it to be thought that he is conceding that Wharton is entitled to call further evidence and reserves the right to object to his doing so).

I remember the windstorm that took place in Port of Spain on the 11th September last. Sometime after I went to the premises 2 - 4 St. Vincent Street, Port of Spain, the following day. I went there on the 12th September at the request of the Managing Director of Gordon Grant and Company Ltd.

Witness referred to H.1.

I inspected the building shown in H.1. It is split up into two. Its on two lots Nos.2 and 4. It is one building - the same method of construction runs throughout the building as a whole.

H.1 shows the condition of the building as I saw it on the 12th September 1958. It appears to be exactly the same.

Witness referred to H.2, 3, 4, 5. These photos show the condition of the building as I saw it.

I made an examination of the building.

As a result I found

(1) The perimeter beam had been fractured in one or two places. The perimeter beam is that

In the Supreme Court

Defendant's Evidence

No. 8

Evidence of Arthur Dudley Moore.

Examination. - continued.

running at the outline of the building at top of first floor between the columns.

(2) The wall above the perimeter beam called a parapet wall was also fractured in several places.

(3) The blast had lifted the main roof off. The whole of the gallery roof had also been lifted up and had been practically entirely blown away and the enclosing walls of the gallery containing louvres windows etc. had been mainly demolished by the blast.

(4) Consequently the ceilings of the main buildings had been affected by weather.

(5) All electrical installations had been affected.

The main roof is mainly of steel trusses, covered with galvanized roofing.

(B.1 shows the trusses).

The galvanized roofing had been torn away in certain sections.

At the southern end the trusses had been slightly lifted off the perimeter beam by the upward thrust.

Witness referred to H.4.

The gallery floor was of timber flooring. The balustrade wall was of timber uprights with a timber sill. The timber uprights ran from the floor to the ceiling.

Between the timber uprights there were glass louvres except for the northern end where there were windows shown in H.3.

At the northern end of balustrade, there was HI-RIB metal. This is a sample of it. Put in and marked 'I'. The plastering of the HI-RIB is continuous on the outside as shown in H.1.

The main supports form a support for the roof rafters of the gallery therefore when the roof had been removed by the blast they were not tied back and were therefore standing by themselves. The upward blast would tend to loosen the bottom end of these vertical posts.

Witness referred to H.4 and 5.

These are views of the gallery looking towards the north. In H.5 I see a horizontal timber member facing the head of the window and louvre openings. This horizontal member and vertical member had moved away from the cross partition.

When I saw this building on the 12th September I thought it was dangerous.

The fact that the roof had been lifted and that September was the season for further squalls, I thought that this roof should be removed.

The gallery enclosing balustrade wall was also unsafe, I thought that the balustrade should be demolished.

Some of the flooring of the gallery had been perforated by falling debris. The sections where the holes were should be taken out.

Exposure to the weather was detrimental to the timber flooring.

The cracked beams of the parapet wall and the parapet walls should have been demolished.

I communicated with the City Engineer as a result of my inspection. The City Engineer inspected. I don't know whether he did it himself. Later I saw this notice - Exhibit A.6. I have read it. I agree with it.

Witness referred to B.1 (photo). B.1 more or less represents the present condition of the building. Witness referred to photo B.3. B.3 represents the present condition of the building.

B.3 shows the roofing covering two bays at the northern end of the building. It is not entirely safe. The enclosing wall at the end is not safe owing to the fact that there is a vast area exposed to any future wind.

A sudden squall could have the effect of blowing down the partition and lifting the roof. It would probably be blown away.

The parapet wall beams were fractured in one of the bays. When I saw the building on the 12th September 1958 I estimated the approximate amount

In the Supreme Court

Defendant's Evidence

No. 8

Evidence of Arthur Dudley Moore.

Examination - continued.

Cross-examination.

it would take to repair the building at approximately $25,000 - $35,000.

I would not recommend that the building should be repaired. I saw Mr. Howden later on - after he arrived from London. I can't remember the date. I went to meet him on the ship, one of the Elders and Fyffes boats. I think the Camito. Major Howden is in charge of the building business of the defendant Company. I made a report of the storm damage to him.

Cross-examined Wharton:

I first visited the building the day following the blast. The second time was two days later, then I inspected again with the City Engineer's representative and again with Mr. Farrell, the City Engineer. I think sometime in December. The date of the third inspection was between the 17th and 20th September, 1958.

I wrote to the City Engineer on the 15th September, 1958. I reported verbally first - as to when they were coming around to inspect. They were making a general inspection of premises damaged by the storm in Port of Spain. I had telephoned and I confirmed it in writing.

I also examined premises at No.6 St.Vincent Street. I was in Port of Spain at the time of the windstorm. It took place between 12.30 p.m. and 1.30 p.m. It lasted about 15 minutes all told.

At the time of the storm I was standing on the balcony of the Union Club on Marine Square. I saw the flying debris above Marine Square. Quite heavy pieces of timber were taken aloft - also smaller scantlings and boards.

I observed the Planning and Housing Building on Edward Street west of Gordon Grant building opposite the Treasury building. It's a wooden frame building with a galvanized iron roof.

Witness shown a photograph. This is a view taken from the Treasury building showing some of the damage to the Planning and Housing Building. This is another view of the same building. Photos put in by consent and marked J.1 and 2.

The condition of the upper floor of this building (Planning and Housing) was definitely dangerous.

I made an inspection of the damaged area. From my personal observations I could say that the upper part of this building was definitely dangerous. It appears to have been repaired - i.e. the upper floors. I had a general professional interest.

There was storm damage to Sandbach & Eckel's building at corner of Queen and Richmond Streets also Gordon Grant's yard at the back. There was no structural damage to the Sandbach & Eckel building. I don't know of any other damaged building in respect of which a demolition order was made by the City Engineer.

Witness referred to photo H.5.

I observe the balustrade. It consists of a sill and timber supports at regular intervals. That sill is a solid piece of timber. The supports are structurally solid supports. The main supports are probably 9 feet apart and the intermediate supports about 18 inches apart. Every nine feet there would be a stouter member. Immediately above the sill there is a strip of wood - not continuous, it is a weathering strip at the bottom of the glass louvre. The framework of the glass louvres was imposed on the sill. Some of the vents go through the sills.

In H.5. some of the uprights that were blown downwere below sill level. Witness refers to spot on H.5. where such a post had been.

I don't agree that there was no damage to any north-south partition embedded in the wall. There was such a partition damaged in the office next door to Mr. Mauritzen going south.

Between Mauritzen and the Trinidad Automobile Association there was no office in the gallery, there was no structure, save one partition.

It may be that there was only one lateral partition in the gallery blown down and that is the one shown in H.5. The notch in the balustrade might have been to support the partition.

In photo H.1 second bay from end - one or two of the main structural posts supporting the roof are seen leaning out. These go from the floor level.

I made an examination of the structural members

In the Supreme Court

Defendant's Evidence

No. 8

Evidence of Arthur Dudley Moore.

Cross-examination - continued.

of the gallery on my first visit the day after the storm.

In H.5 there appears to be only one notch.

The main posts would be fixed in place before the sill was put into it. The gallery roof is a lean-to roof. It appears to have had rafters. The rafters were anchored to a wooden plate on the wall and run over a plate. In photo 5 the complete plate is missing.

Photo 1 shows a flashing from the main building to prevent water getting in. The rafters are sitting on top of the perimeter beam.

The parapet wall is built on the perimeter beam. It is about 4 - 5 inches thick. Behind the parapet is a box gutter formed by the parapet wall on one side. The bottom of the gutter would be a wooden structure.

I would call the parapet wall part of the structure. I saw the panels of the parapet wall fractured. There were also fractures in the perimeter beams below.

Adjourned to 5th March, 1959.

Thursday 5th March, 1959

ARTHUR DUDLEY MOORE, (Continuing under cross-examination by Wharton):

On the day of my inspection I went right around the building. I went into the roof by ladder through the office of the Trinidad Automobile Association. I was accompanied by Mr. Gormandy, a member of the City Engineer's staff. I went into the roof twice, once immediately after the storm and the next occasion with Mr. Gormandy. On the first occasion I went up to the roof through the Trinidad Automobile Association premises also from the outside by ladder.

I think the perimeter beam must be of reinforced concrete. I didn't take a section through it. I don't know the nature of the reinforcement. It's a well constructed building.

Modern reinforcement is done by the placing of mild steel rods. In the older types of building

you sometimes find railway rails. I don't know when the use of steel rods come into existence. I don't know the age of this building. It might be about 40 years old. The building may be approximately 150 feet long. The width may be approximately 49 feet. The blast had lifted the main roof up at the southern end. I cannot say that the roof design is in two parts. I didn't examine it for that detail.

Question: I suggest that from the northern end of a certain point it is a steel construction of gable shape with trusses, and it becomes a hip roof for about the last 20 feet?

Answer: I accept this description, but it is designed as one roof. Up to the point where it becomes a hip the roof is completely of steel construction. The hip portion is composed of wooden purlins, not rafters.

Witness referred to H.1.

The steel structure stops at the apex coming from north, wooden members go off from that point. The hip is a wooden structure.

No distortion of the roof could be seen from the outside. There was damage of the roof - at the line of the southernmost truss where it had fractured a beam and the parapet wall.

This was the start of the damage to the steel roof. It probably went back to the northern end. It appeared to be about 2 - 3 inches at the start. It showed signs in the offices of the ceiling being torn up with it. It was not possible to see how the steel trusses were anchored. They would be anchored to the perimeter beam or the columns - wherever the trusses occur. In this case they appear to go to the column.

Question: Would you dispute that each truss was attached to a metal base plate by means of 6 bolts, and each base plate was anchored in the column by 2 bolts of $\frac{3}{4}$" diameter?

Answer: No.

The lifting of the roof would tear up the whole

In the Supreme Court

Defendant's Evidence

No. 8

Evidence of Arthur Dudley Moore.

Cross-examination - continued.

attachment. It must have done so. I didn't actually see the bolts torn up. It couldn't have lifted otherwise.

The perimeter beam was fractured in a few places, a serious one on the southern end and two on the western side about 2 or 3 bays back. The perimeter beam runs flush with the outside of the columns and the thickness goes through in the column. The perimeter beam may be 15" deep x 9" wide.

In my opinion the perimeter beam could not be repaired. You can replace a perimeter beam by demolishing the whole of the roof and the existing perimeter beams - demolishing the heads of the columns down to 3 - 4 feet below the perimeter beam.

In my opinion and experience there is no other way. You can replace the beam in sections, this would be a patch work. This would not be effective structurally in my opinion.

The mere fact that the beam is fractured does not necessarily mean that the reinforcement is fractured. In my experience of reinforced concrete building I cannot agree that the "patch work" method would be of the same strength as the other way. I don't agree that it would have been necessary to remove only the hip portion of the roof.

Re the gallery - at first floor level the building has going across it steel eye beams of 15" x 6". The gallery also has eye beams 8" x 4", supported by iron brackets. The beams were anchored in the main walls and columns of the building. One or two of the gallery beams on the southern end had been slightly lifted up.

The main steel structure of the gallery was sound. The floor was composed of floor boards and floor joists. Apart from perforations, the boards and joists were fairly sound. To repair the gallery floor I would have to re-set the brackets on the southern side.

I don't agree that substantially the flooring of the gallery was sound. The main perforations in the gallery floor were down by Mr. Mauritsen's end, not in his office. There was a big hole about 2' x 1'. I can't remember how far from his office. I later saw a perforation which appeared to have been

made to let water out inside his main office.- about 2 inches. I did not see this hole on the first occasion. I didn't see any hole in the gallery portion of Mauritzen's office. I must have gone there about 3 times at intervals of some days. The debris had been cleared up after some time.

I know that south of Mr. Mauritzen's office there was another office with a gallery portion. I only noticed the debris on the gallery on my first visit. As far as I remember the hole in the gallery floor was south of the partition shown in H.5. The hole may have been in the office of the Trinidad Automobile Association.

I made a report to Commander Bushe, the Managing Director of the Company, on the 12th September, 1958. I told him that the building was dangerous and had to come down. That's the only advice I have given him.

The trap door through which I entered the roof was in the office of the Trinidad Automobile Association. I remember seeing Mr. Wilson the Secretary, a short elderly gentleman.

Mr. Gormandy went up the ladder. I can't remember whether I went up on this occasion. There was only one occasion that I went into this office with Gormandy. I probably did mount the ladder. I can't remember in detail. I can't remember whether Gormandy did go up the ladder. I went only up to the point where my head and shoulders were above the ceiling level. This was between the 17th - 20th September, 1958.

I can't remember whether I passed any information to Gormandy while I was on the ladder. Gormandy might have made notes from what I told him. I don't know about any plans in connection with the work now being done. I am not dealing with this project. I did not take any detailed measurements on any of my visits of inspection.

My report to Commander Bushe was verbal. That was my report to the Company. The estimate I gave re the repairs was given verbally to Commander Bushe possibly a week after the 12th September.

Re-examination.

Re-examined Wells:

Re the conversation with Commander Bushe on the 12th September, 1958, apart from my opinion re the dangerous condition of the premises Nos.2 - 4. I had no other conversation.

In the Supreme Court

Defendant's Evidence

No. 8

Evidence of Arthur Dudley Moore.

Re-examination - continued.

Mr. Farrell, the City Engineer, visited the building with me in December, for the purpose of an inspection. This visit did not alter my opinion in any way.

I said the roof was lifted 2 - 3 inches, it lifted the ceiling with it in the offices. You saw it principally from below.

The bottom plate was fixed on top the floor joists and flooring. The pushing out of the main structural members affected the plate by loosening the complete balustrade at intervals of approximately 9 feet.

I would not be surprised to hear that the whole of the balustrade came down by merely being pushed.

The wind cut across the southern width of the building and passed on a line with the western end of the Treasury building over Gordon Grant's Hardware yard across McEnearney's showrooms at Charles and Richmond Streets. That is the extent of my knowledge of it. The general direction was from south-east to north-west.

The Planning and Housing Commission Building was completely timber frame, a typical building designed during the war for temporary use. I actually saw the damage done to it. To replace that to its former condition would not be a too expensive job for the same type of construction. During my years of experience I have had experience of repairing buildings of the type of Nos. 2 - 4 St.Vincent Street - considerable experience. I am the senior partner of Mence and Moore.

No. 9

No. 9

Evidence of George Charles Howden.

Examination.

EVIDENCE OF GEORGE CHARLES HOWDEN

GEORGE CHARLES HOWDEN, sworn states:

I am a Director of Gordon Grant and Company Ltd., in charge of the Lumber and Hardware Department. My work causes me to deal with building contractors. I am not an expert but have some personal knowledge of building construction.

On the 11th September, 1958 I was at sea

returning from the United Kingdom. I arrived back on Friday the 19th September. I was met on board by Mr. Moore and his wife.

He made a report to me about the storm damage on the 11th. I got first to know of the storm damage when I got my passport stamped on the 19th. I have my passport.

Rates and taxes are paid for the premises in which Mr. Mauritzen has an office. They are assessed as Nos. 2 - 4 St. Vincent Street as one entity.

I have in my possession the assessment notice for the year 1958. I also have a receipt for payment. The plaintiff pays $44 per month rent. The total amount of rent for the premises 2 - 4 St. Vincent Street is about $304 per month.

After the storm damage all the tenants left the premises except the plaintiff. They left gradually. They were probably all out towards the end of October or first week in November.

I first saw the storm damage on Saturday 20th September in the morning. I noticed the condition of the roof, the overhanging balcony. The balustrade was still there. I noticed the general condition of the building in relation to the damage done. I formed the personal opinion that the building was dangerous.

On the 6th October I received a letter from the City Engineer giving me notice to do the things therein specified, A.6, including the removal of the roof and the balcony over the footway of South Quay and St. Vincent Street.

I had letter A.5 circularised to all the tenants including the plaintiff. I wrote to the City Council a letter on the 7th October and a subsequent one on the 17th October. (Letter of the 7th October put in by consent and marked K.1. Letter of the 17th put in by consent and marked K.2.) I wrote a further letter to the City Council dated the 3rd November, 1959 - K.3.

The plaintiff did not leave and we eventually took out ejectment proceedings against him. These proceedings were eventually filed by the plaintiff and we have counterclaimed for possession.

In the Supreme Court

Defendant's Evidence

No. 9

Evidence of George Charles Howden.

Examination - continued.

After the 22nd September 1958 I went to the premises from time to time. Instructions were given to Mr. Ackelsberg to supervise the work, also not to take down the roof over Mr. Mauritzen's premises. I instructed him to cause as little nuisance as possible to the plaintiff.

Photos B.2 and 3 show the present condition of the premises.

If the premises are not recovered, it would not interfere seriously with the business of the Company. It would interfere seriously with the plans of the Company.

At the moment our produce kept on the ground floor is getting wet and we want to have a proper cover. The roof over the plaintiff's place is extremely dangerous, as it remains at the moment. Without getting possession we cannot complete any plans for reconstruction of the building.

The demolition work was commenced on approximately the 10th December. The City Engineer and my architect, Mr. Moore, visited the premises on the 8th December. The City Engineer gave me advice to proceed with the work, accordingly the work was commenced on the 10th December.

From the 19th September to the time the Writ was filed I saw the plaintiff at intervals. He never made ahy complaint to me with regard to dust, dirt or noise nor with regard to the manner in which the demolition work was being carried on. He must have known that I was the responsible director, as I signed the majority of the letters.

He made no complaint about the projection of boards or nails on the stairway, nor of the presence of concrete plaster on the steps or bits of board, nor about the staircase or balustrade. He never made any complaint to me personally.

He made no complaint to me when the contractor cordoned off the pavement at the entrance. That was a safety measure. I had warning notices put up on the first floor and the ground floor.

Demolition work of this kind would create a certain amount of dust and cause some noise. I was present a number of times when the demolition work was in progress. It was done in my opinion in a proper fashion.

I did not notice any unnecessary dust or noise. There must have been a certain amount of plaster etc. lying about from time to time. I followed the advice of my technical advisers.

The roof at the present has been brought down to the level just above the ceiling of the first floor. After the storm the balcony was open to the weather and was in part damaged. It was not safe for people to pass on it in that condition.

The construction of the new staircase had the effect of making the outlet closer to the plaintiff's premises.

The staircase is commodious enough for ordinary use. I knew of the complaint in the letter to the plaintiff that he had dug a hole in the floor to let the water down.

Sometime in November defendant Company's Customs Clerk spoke to me. Accompanied by my carpenter I inspected the office immediately below the plaintiff's office i.e. our Customs Department in charge of one de Silva and found that water had in fact run through the top ceiling into the office. This was towards the St. Vincent Street side of the plaintiff's premises. It would be about the middle of the office. It was a considerable amount of water. Between the time of my return and early November it rained most days - quite heavily at times.

Luncheon adjournment:

Court resumes at 1.30 p.m.

Cross-examined Wharton:

Sometime towards the end of November I went to the plaintiff's office and spoke to him. I have no recollection of his telling me that he had seen his solicitors and that they were going to apply for permission for inspection of the building on his behalf. I have no recollection of having turned away with a gesture denoting anger. Had he made such a request I would have referred to my Board of Directors and my Architect, Mr. Moore.

I do know that the plaintiff's solicitors wrote our solicitors on the 17th December 1958 in that sense. The request was refused.

In the Supreme Court

Defendant's Evidence

No. 9

Evidence of George Charles Howden.

Cross-examination - continued.

(Refer to letters A.11 and A.12. Witness referred to letter A.13. The letter refers to the first ejectment proceedings of the 13th November, 1958. I did not regard the request contained in A.13 to be a serious request. The notice from the City Engineer was dated the 6th October, 1958. I considered it a very serious matter indeed. If it were a genuine request it would have been written sooner. (Witness referred to A.10 - sentence reading "We have now been advised that certain parts of the building are in imminent danger of falling..."). I still say that the plaintiff's request was not a genuine one.

Re letter A.13, in view of the letter I think the plaintiff's statement of his willingness to reimburse us for any damage done etc. was a genuine proposal.

Question: Do you think that in ordinary fairness this request should have been granted?

Butt objects to the question on the ground of irrelevancy.

Objection overruled.

Answer: No.
I suggested no reason why the request was refused.
Witness referred to photos F.1 - 4.

Up to after the roof was pulled down there was a considerable amount of builders debris all over the place. Up to the time that the gallery was actually demolished there was a considerable amount of debris on the first floor. To the best of my recollection there was a path leading to the plaintiff's office with debris on each side.

The reason for the refusal was not that the defendant Company had anything to hide.

I produce the Assessment for 1958 dated the 8th March, 1958. Put in and marked L.

The total rent for the first floor of the premises Nos.2/4 was $304 per month. The whole of the ground floor is occupied by my firm.

At one time Masons Ltd. occupied the southern half of the ground floor. Masons was at one time a subsidiary of the defendant Company.

The plaintiff's business requires his constant attendance at Steamships Offices, Wharves, Customs area etc. He does a general freight forwarding business. His clientele is composed of the public. I don't know whether Escala and Navarro do a great deal of business with the defendant Company. Since leaving Escala and Navarro became lodged by Archer Coaling Company at premises leased to them by the defendant Company. We promised out tenants we would do our best for them. It's not to my knowledge that we played any part in accommodating Escala and Navarro. The Archer Coaling Company premises are next door - there is a roadway between.

Witness referred to A.10. No.90 Frederick Street is away from the shipping area. It would do for the business of a freight forwarding agent but it is not convenient. A person setting up such a business at 90 Frederick Street would be setting up at a disadvantage.

There was no place available on our ground floor. We were in desperate need of storage space. The place would normally be packed with goods right up to the ceiling. Just before Christmas most of the goods might have gone out, i.e. foodstuffs and beer. I would be surprised to hear that up to only 2 or 3 weeks ago there were only a few things stored in this place.

The Company's business is to move out of No.6 shortly - to move to the corner of Marine Square and St. Vincent Street.

Half of the premises No.6 has already been leased as a block and there are negotiations on hand for the taking over of the rest.

It was not a matter of policy that we should not offer any part of the premises we control to the plaintiff or any of the other tenants. We were willing to do all we could to assist the plaintiff in his difficulties.

Witness referred to letters, K.1 to 3. There were no replies to any of them. The City Engineer accepted the position set out in K.1 - letter of 7th October, 1958. There were no plans made for the reconstruction of the premises. Up to now there are no plans. Witness referred to photo F.1.

The new staircase is about 3 feet wide. There is a projection of about one foot of the upper piece

In the Supreme Court

Defendant's Evidence

No. 9

Evidence of George Charles Howden.

Cross-examination - continued.

of timber. As far as I know it is still in that condition. I would say it's a source of danger (but nobody has ever complained about it slightly.

With the roof dropped as shown in F.1, dropped about 9 feet - exposure of the plaintiff's office to the winds might be very dangerous. The new roof is composed of the same material as the old roof, i.e. trusses, galvanized iron sheets etc.

I was occasionally present when the workmen were knocking off the tops of the columns. There were four reinforcing bars in each column approximately ⅝ inch in diameter. I did not see the construction of the beams.

I myself did not give the plaintiff notice that we were doing to demolish the balustrade. I don't know that any such notice was given to him. H.3 and B.2.

I had had a report from the foreman. I don't know of any notice being given to the plaintiff for demolition.

Witness referred to photos F.2 - 4.

Question: I suggest that the barricade put up to replace the balustrade was put up after the 5th February when the plaintiff filed his affidavit?

Answer: It may have been.
I cannot say when the balcony was actually demolished.
I am not in charge of the demolition work. The work was done by a contractor. This work is in my particular assignment as a Director of the Defendant Company.

Question: Can you state what was the amount spent on the work so far?

Answer: It was a contract price - $6000 in round figures.

The contract was to lower the entire roof, demolish the parapet wall, the perimenter beam, columns and balcony as set out in the letter from the City Council. I know there will be extras as a result of the work being held up.

Witness is handed a cadastral sheet of the City of Port of Spain containing the site of the premises in question. Put in and marked "M". The figure of $304 per month with the value of land today makes it quite uneconomical. I would say the value of land today is $20 per sq. ft. The building appears to be a substantial building. There was nothing required to be done to the lower part of the building.

In the Supreme Court

Defendant's Evidence

No. 9

Evidence of George Charles Howden.

Cross-examination - continued.

Re-examined Butt:

If Mauritzen remained there as the only tenant and we had to repair the building it would be even more uneconomical to us.

Until I got possession of the building I could formulate no plans for proceeding with the construction. The projections and nails at the top of the staircase never formed any impediment to me.

Re-examination.

Even up to now when a ship comes in the ground floor space would be found to be full of goods.

No. 10

No. 10

EVIDENCE OF SAGE DE SILVA.

Evidence of Sage De Silva.

SAGE DE SILVA, sworn states:

Examination.

I am employed in the Customs Department of the defendant Company. I know the plaintiff's premises upstairs at St. Vincent Street. Around the 11th September 1958 the premises were damaged by a windstorm.

On the 22nd September something occurred. We had heavy rains that day. Sometime after the heavy rains had ceased I heard noises like pounding of the floor above me. Shortly after that a lot of water started to fall on the celotex ceiling of my office. Before the pounding that I heard on the floor no water fell on the ceiling.

Between the date of the storm and the 22nd September it had rained on other days. No water had come through on those days. Quite a lot of water came in. The ceiling started to sag. I

In the Supreme Court

Defendant's Evidence

No. 10

Evidence of Sage De Silva.

Examination - continued.

Cross-examination.

phoned our Lumber Yard. I got a carpenter to come over - Mr. Shepherd. He punched holes in the celtex to allow the water to flow freely. The water came through the holes in the celotex. While the water was coming down on the celotex I heard sounds of sweeping above. This was reported to Major Howden. The following morning he came to me. We went upstairs to the gallery outside the plaintiff's office. I did not go through the plaintiff's door. From there I could see into his office. I saw a hole on the flooring. That hole was above the spot where the water came through my ceiling.

Cross-examined Wharton:

This was after lunch - about 2 p.m. It was a working day, I don't remember what day of the week. If the date had not been put to me I would not have remembered it. Shortly after the pounding I heard and saw water coming on to the celotex ceiling - shortly after the pounding - less than ½ hour after.

My office is directly under the plaintiff's office. My office is about ¾ the size of this room, (4th Court room).

After the storm I don't believe there was any roof to the gallery.

During September it rained heavily. I can't say whether rain blew into the inner offices upstairs or not.

I used the original staircase. I walked quite a distance from the head of the staircase. I got about 4 to 6 feet from Mr. Mauritzen's door. I saw the door leading to his private office. I don't remember whether it was open or shut.

I believe this took place around 9 a.m. I saw the plaintiff in the office. I didn't notice anyone else. I believe he was standing. I should imagine he saw me too. He was about 10 - 15 feet away. I did not speak to him nor did Major Howden. We have not repaired the celotex ceiling. It's condition can still be seen. I heard the sound of several blows. I don't know what was making the noise. I connected the pounding with the falling of water on the ceiling.

I did not speak to Mr. Mauritzen because it was

not my business in the first place. A director was with me. I can only speak for myself. No repairs have been done to the celotex ceiling. I had to put galvanized iron between the floor and the ceiling to draw off the water.

In the Supreme Court

Defendant's Evidence

No. 10

Evidence of Sage De Silva.

Cross-examination - continued.

Adjourned Friday 6th March, 1959.

Friday 6th March, 1959.

No. 11

No. 11

Evidence of Daniel Bleasdell.

Examination.

EVIDENCE OF DANIEL BLEASDELL

DANIEL BLEASDELL, sworn states:

I live at Simeon Road, Petit Valley, Diego Martin. I am a carpenter foreman employed by Mr. William Ackelsberg, building contractor. I have been working on the job at Nos.2 and 4 St.Vincent Street, Gordon Grant's premises.

On the St. Vincent Street side there was a balcony over the street. Witness referred to H.2.

When I began working on the premises the balcony was more or less in the condition shown in H.2. When I first went there, there were very few panes of glass i.e. louvres.

I know the plaintiff's office. His office is at the northern end of the building. I had to do with the removal of the balcony and balustrade. There was one window in Mr. Mauritzen's section. Witness referred to photo B.1. This shows the plaintiff's premises. This photograph shows more than what I saw when I first began to work on the premises. The amount of Naco louvre glass that I saw when I went was less than that shown in this photograph.

I had something to do with the removal of the windows and louvres. I removed them. I took out the louvres with the plaintiff's consent. I told the plaintiff I had to take down the balustrade and I would be taking down the louvres and the windows. He told me it was alright with him.

I can't remember what day of the week it was. It was around midweek when I took out the louvres and windows. I did so the same week that I had the conversation with Mr. Mauritzen.

In the Supreme Court

Defendant's Evidence

No. 11

Evidence of Daniel Bleasdell.

Examination - continued.

The balustrade is made of plaster on top of HI-RIB attached to some 2" x 4" scantling. I supervised the removal of that. This was done on a Sunday - one or two Sundays after I had spoken to Mr. Mauritzen. I did this on a Sunday on account of the traffic in the street during week-days.

The balustrade on the St. Vincent Street side wal all removed on the same day - a Sunday. It was merely "tapped" with a sledge at the top and bottom and it kept falling. I started at the south end of the balustrade.

A little before one reached plaintiff's office, the weight of the plaster and HI-RIB nailed on to the upright pulled everything over back towards the plaintiff's office, into the street. All the HI-RIB fell in the street.

The balustrade didn't give very much trouble to remove. It had already started to loosen. We did not go into the plaintiff's office that Sunday. His door was locked.

Part of the work I did was to lower the roof also to break down certain cement work. I had no discussion with the plaintiff with regard to this. The only thing he asked me was to keep the debris from where his customers had to pass. One of the clerks in the plaintiff's office complained that dust was coming in on them.

There was a portion of this partition through which dust could pass and enter his office. I took some galvanize and barred it off to prevent the dust entering. This was later removed. It remained up about 2 weeks.

By Court: I put up the galvanize the very said week that the complaint was made. I took down the galvanize after there was no more dust. I wanted the galvanize to use.

I never had any conversation with the plaintiff about the galvanize.

Cross-examination.

Cross-examined Wharton:

I had no talk with the plaintiff about the removal of the galvanize.

Mr. Ackelsberg was my employer and the

contractor on this job. I have not seen him in the precincts of the court. I last saw him about 3 - 4 days ago. I worked on the Sandbach Eckel job when it first started. I first started to work on the premises about a week before Christmas. I was the person who started the work. It could have been around the 10th December that we started.

The removal of the balcony was not the first thing we did. The first thing we did was to remove the undamaged louvres, including the frames - not including Mr. Mauritzen's office. I did not remove them from Mr. Mauritzen's because the plaintiff was occupying up there. We had sufficient work at the southern end - we started at the southern end. We then went back to the southern end and began dropping the roof. We were the only people who did demolition work on the premises as far as I know. Witness referred to B.1.

Panes were missing from the Naco glass louvres. I remember that there was a glass window there. I don't remember if there were two windows. I don't know the date on which B.1 was taken. I removed the balustrade a week or two before Carnival, the latter part of January. When I removed the balustrade the plaintiff was still occupying his office.

In the beginning Mr. Ackelsberg had given me general instructions that the balustrade was to come down; he gave me no specific instructions as to when to take it down. The general instructions related to the whole of the balustrade. The balustrade also ran along South Quay. I think I removed the balustrade on the South Quay side about a week before Carnival.

It took us about 3 hours to demolish the St. Vincent Street balustrade and remove the stuff (i.e. debris) and everything. It took us about 1½ hours to remove the South Quay balustrade. We used 14 lb. and 10 lb. sledges.

Knowing that the balustrade was loose we had to be careful of the safety of the men using the sledge hammers - that's why we had to tap the balustrade. It was easy to remove the balustrade up to the plaintiff's office.

I did not of my own volition remove the louvres and windows from the plaintiff's office - because he

In the Supreme Court

Defendant's Evidence

No. 11

Evidence of Daniel Bleasdell.

Cross-examination - continued.

was occupying the office. It was not because he had asked me not to do it.

I removed the undamaged louvres and frames from Mr. Mauritzen's office. I personally removed the Naco louvres and frames. It was a working day, a week day at sometime towards the latter part of January - a little before - a day or two before we broke down the balustrade.

Witness refers to louvres nearer northern end and states, "There are the louvres that I removed". 10

I am familiar with Demerara windows. I remember seeing one Demerara window. The photograph shows a Demerara window on each side of the glass louvres I have referred to. A demerara window is of the type of wooden window in this Court hinged horizontally. It can be made of glass. Witness referred to H.3.

This photograph looks like a photo of the plaintiff's office. The windows I referred to as Demerara windows are made of glass. They are shown in Photo H.3. The window shown between these two 20 is made of wood. I see in this photo two panels of Naco glass louvres.

I remember seeing the plaintiff's sign board. I took it down before I broke down the balustrade. I took down the sign on a Saturday evening. We broke down the balustrade the next day. I put it upstairs against the partition of his office. I didn't tell him it was there.

I put up the barrier shown in B.2 and 3. I didn't put back the sign because I didn't have the 30 chance to put it back. I told Mr. Mauritzen about it when I was going to take it down. I told him I am removing the sign because I have to take down the balustrade wall and then I would replace it back for him whenever he wants it. He said "It's up to you, you can go ahead," and I went ahead.

Afterwards they came and stopped the work. Mr. Ackelsberg asked me to stop working. That's the reason why I didn't put back the sign.

By Court: I stopped working on the premises about 40 2 - 2½ weeks after I took down the sign. I put up temporary bars the Saturday before Carnival (i.e. 7th February).

It is not true that I broke down the balustrade and sign board together. The sign was taken down on the Saturday evening. From the day the work stopped I never went back to the building. When I placed the signboard against the wall the name was facing outside. All the signs I saw there I took down on different occasions.

Witness referred to photo F.1.

It shows a portion of the roof lowered down to the first floor. I don't know what became of the sign board afterwards.

By Court: Up to the last day I worked I saw the sign board there intact. I took care of the signs. The other persons took their signs away.

It is true that the plaintiff gave me permission to remove things other than the louvre frames and broken louvres.

I saw the state of the gallery on the 10th December. When I reached there the uprights were there the roof was entirely blown away. If I were asked by the owner to repair the gallery, I would not have taken the job - on account of the danger the place was in - except to take it down and rebuild it.

The balustrade wall was already shaking and leaning towards St. Vincent Street - not every upright but certain parts. It was leaning to the extent of perhaps 2 inches or 3 inches. Starting from South Quay it was leaning at about the second or third space between the uprights also the space between the plaintiff's office and the other office to the south. The first space was not leaning nor the fourth space. I think the length of the gallery on St. Vincent Street may be about 160 - 170 feet. It was leaning at a spot about 7 - 8 feet from the plaintiff's partition for about a length of about 10 feet. For those two reasons I would not repair the verandah.

Re the roof, the greater part of the roof was taken down and lowered to a level of about 3 feet above the first floor. The roof we lowered is a big structure about 100 feet long. The roof is of steel truss structure. A certain part of it is of wood, the hip part to the south.

In the Supreme Court

Defendant's Evidence

No. 11

Evidence of Daniel Bleasdell.

Cross-examination - continued.

I started lowering the roof from the southern end where the hip roof was. The hip part of the roof was about 30 feet long. It was of wood. All the rest was of steel truss structure. The covering of the roof was galvanized iron sheets. Wooden purlins held the galvanize to the steel trusses. The purlins were bolts to the trusses. The roof was lowered in sections. The trusses were taken away singly. When each truss was dropped we unbolted the purlins from the steel. Some of the purlins were rotten. This was to be expected. We used the good purlins. The purlins were 3" x 6" or 3" x 8". The purlins are put up on edge and anchored by a bolt to the steel truss. In the case of the hip roof the purlins would be nailed to the wooden truss. It is not possible to bolt a wooden purlin to a wooden truss unless the wooden truss is thick enough.

We moved the hip roof from where it was piece by piece and placed it on the floor in one day. It was put back in about 2½ - 3 days. I didn't work on the hip roof steadily, other work was going on. The hip roof was cast into concrete. I had to break the cast to remove it.

Luncheon adjournment.

Court resumes at 1.30 p.m.

Witness referred to photos B.1, 2 and 3.

I put up the barricade along the pavement on St.Vincent Street and South Quay. B.1 shows the northern end of the barricade. It doesn't go along the complete length of the building.

Cars used to go into the large gateway and park. I could have blocked the whole pavement along the whole length of the building. I had permission for that purpose. I didn't do so because I had no intention to break down the plaintiff's portion - so I would have had no debris falling downstairs.

I see a window with blinds behind the sign "Cocoa, etc." The way to go into that office was through that same open gateway.

Witness referred to photos E.1 - 4.

In E.3 I see the plaintiff's entrance - the first one south of the big gateway.

E.1 shows the plaintiff's entrance and the barricade we put across it. At first we had an opening 3'6" wide - not immediately in front of his entrance. The plaintiff only asked me to make it a little wider.

It is only accidentally that the piece of wall in the plaintiff's office i.e. the balustrade, collapsed. I had never intended to break down that portion of it. In tapping, that part of it collapsed. I didn't want it to happen. I was surprised when it happened. This was on a Sunday.

I moved all the signs as I knew that accidents could occur. The plaintiff's sign was screwed in to the base of the balcony itself. I thought something might have flown from one of the workmen. If the sign board were still on the balcony at that time and fell from that height to the ground, I would expect it to be broken up. I built the barricade to protect the public. The pavement is about 8 feet wide. I left about 3 feet of the pavement free. This is shown in photo E.3.

I knew that portions of the balustrade would fall in the street.

Witness referred to H.2.

Before I took it down I went up on the roof. One or two sheets had flown away - one or two had been bent - on both the eastern and western sides.

There were two ventilators on the roof, two dormers. In this photo there is no sign of any whole sheet of galvanized iron removed. The corner of a sheet of galvanize appears to have been curled up. There seems to be another piece of galvanized iron pushing up at the edge of the roof. The owners could easily replace a piece or two of galvanize if they wanted to do it. I had to knock out the nails from the hip portion of the roof.

Re-examined Wells:

Witness referred to B.1.

From the time I began working I always used to go to the plaintiff's office to use his telephone. I went there from quite early in the work.

There were missing louvre glass panes. I can't

In the Supreme Court

Defendant's Evidence

No. 11

Evidence of Daniel Bleasdell.

Re-examination - continued.

say whether those that remained were all whole or not. The first time I had anything to do with the louvres was just before I broke down the balustrade.

Witness referred to H.2.

I see signs on the balustrade. I took down a sign for someone, the first person at the corner, I took down some letters for them.

There was a lintel right around and a crack in it on left at both ends of the truss.

There is a beam running right around at the top of the columns. The truss then comes and rests on top of the concrete. The lighter concrete is then cast to hold up the spouting. This comes over the truss. When I came there the truss had moved from where it had been bedded. There were cracks in the concrete. I put up not only barricade, but warning notices at the doors. I also had up red flags.

Close of case for the defendant Company.

No. 12

No. 12

Notes of Proceedings.

6th & 9th March, 1959.

NOTES OF PROCEEDINGS

Wharton Q.C. states he desires to call evidence in rebuttal as well as in relation to the Defence and Counterclaim - in rebuttal of the evidence of Moore and Bleasdell.

Refers to Phipson on Evidence, (8th Edition p.37).

Wells submits that right from the beginning, the condition of the premises was in issue as regards the plaintiff's claim - that although the plaintiff's counsel did not elect openly, he did certain things which amount to an election to call all his evidence at once e.g. in his opening counsel for plaintiff referred to condition of the premises - reference to Lavender v. Betts etc. Woodfall v. Landlord and Tenant.

Statement that "the storm did a certain amount of damage but created no danger at all with regard to No.4 St. Vincent Street probably none with respect to No. 2. Remedy was a simple one it could have been repaired".

Shaw v. Beck, (1853) 8th Ench. 393.

Submit that there was an implied election by plaintiff's counsel to call evidence re condition of the premises.

Court refers counsel to Budd v. Davison,(1880) W.R. 192. Wells submits that the element of surprise was present in that case.

Wharton in reply:

Opening and evidence called by the plaintiff i.e. that of the plaintiff and his clerk dealt substantially only with the plaintiff's case, i,e. case of trespass and nuisance.

3.10 p.m. adjourned to 9th March, 1959.

Monday 9th March, 1959.

Court rules that evidence in rebuttal is admissible.

Wharton states he proposes to call the evidence of Mr. Wilson, Secretary of the Trinidad Automobile Association and that of Mr. R.D. Archibald, Civil Engineer.

PLAINTIFF'S EVIDENCE IN REBUTTAL

No. 13

EVIDENCE OF FRANCIS HUGH WILSON

FRANCIS HUGH WILSON, sworn states:

I live at 55, St. Vincent Street, Port of Spain. I have been the Secretary of the Trinidad Automobile Association since October, 1953. I still am the Secretary.

The offices of the Association were at 2 and 4 St. Vincent Street, Port of Spain. The Association retained these offices till the end of October last. The offices were immediately north of these occupied by Escala and Navarro. Escala and Navarro first occupied their offices in 1954. They were previously in the offices now occupied by the plaintiff. There was no means of access between the two offices.

In the Supreme Court

Plaintiff's Evidence in Rebuttal

No. 13

Evidence of Francis Hugh Wilson.

Examination - continued.

There was a partition between them extending right across the gallery.

There was a windstorm on the 11th September last. We made an inspection of the premises - not only our own premises, but also the other offices. I went round inspecting the different offices with one or two of the other tenants, the same afternoon of the storm as well as the next day.

I saw no cracks between the ceiling and the wall in my office to indicate that the ceiling had shifted. I observed none in the office of Escala and Navarro. On the occasion when I went into the office of Escala and Navarro on the following day, Mr. Navarro was with me.

The gallery roof was taken off after the storm. After the 11th September, rain came from the gallery through my two doors.

Witness shown H.5. This photograph shows the gallery outside my office. My office did not include the gallery. I appear in the photograph. H.4 was taken from a point further back than H.5. The partition shown in H.4 divides the office of Escala and Navarro from the rest of the office.

We put up a light wooden screen with a glass door across the gallery - attached where the notch is in H.5. H.5 shows the screen lying on the floor.

Question: Was either of your longitudinal partitions affected by the storm i.e. damaged by the storm?

Wells objects to the question.

Objection overruled.

Answer: The partition we put up with the glass door was damaged by the storm, no other.

There were no perforations made by the storm in the gallery floor. Sometime after the storm damage I and others tested the verandah. We held it to see whether it was steady or not. It was steady. This was about the following day. I didn't see any bulge in the balustrade.

Sometime later I received a notice to quit. I have it with me. The notice was enclosed in a letter

dated the 30th September, 1958. Subsequently I got a letter enclosing a notice from the City Engineer. After this I went round again with other tenants on several occasions. On these occasions I saw nothing to alter my view as to what I had previously seen. I shook the balustrade only once. I did not test it again. I remember an occasion when Mr. Moore, the Architect, came to my office.

Cross-examined Wells:

I am not an engineer, nor an architect, nor have I any such experience.

My premises received a fair amount of damage in the storm. I was naturally concerned to see what that damage was and how I could prevent further damage from the weather. Every time it rained, the rain came into the office.

I held the balustrade with my hands and tried to shake it. I can't say what wood the balustrade was made of because it was painted. It was made entirely of wood. I shook hard enough for it to shake if it were loose. I felt no looseness or vibration at all.

By Court: I made this test at one spot opposite my office. I shook it somewhere near where the upright member is shown in H.4.

Question: I suggest that H.4 shows a gap of 5 or 6 inches between the balustrade and the wall?

Answer: It appears so, but it could have been that way too.

It appears that the upper portion of the gallery structure has moved away from the partition. This also appears to be the case with the further partition.

There was nothing after the storm holding the top of the uprights to the main wall. Yet I felt no vibration. That wouldn't affect the strength of the balustrade. I didn't shake the uprights. I didn't inspect the ceiling by climbing up on a ladder. The ceiling is about 15 - 18 feet high. The ceiling was of wood. I didn't use a ladder at any time. We were all interested in the whole place.

In the Supreme Court

Plaintiff's Evidence in Rebuttal

No. 13

Evidence of Francis Hugh Wilson.

Re-examination.

Re-examined Wharton:

The damage I referred to as being done to my offices was the damage to the gallery outside my offices that the roof had been blown away the glass louvres broken. Rain would blow through the open doors.

No. 14

Evidence of Rupert Douglas Archibald.

Examination

No. 14

EVIDENCE OF RUPERT DOUGLAS ARCHIBALD

RUPERT DOUGLAS ARCHIBALD, sworn states:

I am a Civil Engineer in practice in Trinidad. I received the Bachelor of Engineering degree from McGill University. I am a member of the Engineering Institute of Canada.

I did my apprenticeship with the Trinidad Government Railway commencing from 1935-1941. I was then a draughtsman surveyor and general assistant to the Engineers.

In 1941 I went to Canada and entered McGill University, graduating in May, 1946. I worked each of the 4 summers for approximately 3½ months each summer. You were required by the University to do 9 months practical work apart from the academic training. The first 2 summers I was employed in the Design Department of the Aluminium Company of Canada in Montreal. The last 2 summers I spent in Quebec, employed by the same Company in the Time Study and Efficiency Department.

While still in Canada in 1946 I received an appointment in the Maintenance Department of the Trinidad Government Railway. I was Assistant Maintenance Engineer of the Trinidad Government Railway from June, 1946 to the end of January, 1949.

I was responsible for the maintenance of all structures, buildings, bridges, the physical side of the signalling arrangements, the tracks and all works and drains.

In the Supreme Court

Plaintiff's Evidence in Rebuttal

No. 14

Evidence of Rupert Douglas Archibald.

Examination - continued.

In 1949 I went into private practice and engaged in building construction and a certain amount of consulting work - until early 1953. From 1953 to date I have been practising as a consulting civil engineer. Half of my practice is in collaboration with architects, the other half directly with owners. I do the structural design for architects. The architect presents to me his sketches and requirements and I do the structural side of the plans i.e. those dealing with the strength of the building.

I know the building owned by the defendant Company at the corner of South Quay and St.Vincent Streets, Port of Spain. I was engaged by the plaintiff to make a report on the premises. My first visit to the plaintiff's office was on the 27th November, 1958. The plaintiff showed me his office and we walked along the balcony as far as the Trinidad Automobile Association premises. I then made an examination only of the plaintiff's office. I advised the plaintiff that I required permission to survey the building as a whole.

With regard to the balcony, the roof had been blown off entirely. The glass louvres, jalousies on western side from balustrade level to roof level was missing in several sections.

Most of the glass in the remaining sections was shattered and there was a lot of glass and debris on the balcony floor. The glass and debris had been swept to the two sides so that there was a path approximately down the middle about 3 feet wide.

The plaintiff drew my attention to the balustrade near to the entrance of the Trinidad Automobile Association office and spoke to me about it. I made a test by putting my weight against the balustrade and shaking it. The balustrade did not vibrate, At that moment I didn't come to any conclusion. It was my first visit. We returned to the plaintiff's office and we both made similar tests at the plaintiff's section of the office, by leaning against it and shaking it, not at the same time. Again the balustrade did not vibrate. On this occasion I also kicked against the HI-RIB sheet enclosing the balustrade. I wanted to know whether the HI-RIB was loose on the frame of the balustrade. I made no impression on it. The plaintiff showed me a hole in his balcony floor

In the Supreme Court

Plaintiff's Evidence in Rebuttal

No. 14

Evidence of Rupert Douglas Archibald.

Examination - continued.

which was on the south west corner of the counter where apparently a large piece of timber had fallen on its end and smashed the wood making a hole. The piece of board affected was about 10 x 4½ inches.

I then went downstairs to the pavement on St. Vincent Street and walked from the northern end of the building along St. Vincent Street around the corner on South Quay to the eastern end of the building. I did that deliberately to examine the supports of the balcony and the condition of the floor and floor joists from underneath.

On the St. Vincent Street side the building from north almost to the south end is divided into 8 equal bays - the span of each bay being about 16 feet 9 inches - centre to centre of the main columns of the buildings. The columns are concrete and are 2 feet square from pavement to first floor; from first floor level to truss height, the east west dimension is 20 inches and the north south 24 inches. I eventually made a plan.

On this first visit (27/11/58) I came away from the premises with the impression that the floor of the balcony and the balustrade could be retained if it was desired to rebuild the balcony similar to its former state.

I stepped over into the car park on the western side and looked on the roof and then went into the island dividing the 2 lanes of South Quay and observed the roof.

The greater part of the galvanized roof covering was intact. I didn't see any missing. The roof had two ventilators on the St. Vincent Street side. Photo H.2 shows the ventilators I refer to. I saw damage around the galvanized covering of both of these vents i.e. the galvanize was twisted up, half ripped off and by the northern ventilator and on the western side of the roof there was a dent on the ridge and by the side - as though some heavy piece of debris had landed on the roof.

Luncheon adjournment.

Court resumes at 1.30 p.m.

On the St. Vincent Street side starting from the northern end there were 8 equal bays - the average span was 16'9". Embedded in the column

there is 4" x 8" x ¼" steel eye beam which comes out horizontally. It projects 8 feet from the column over the pavement. That eye beam is supported by an iron bracket.

The vertical arm of the iron bracket is bolted into the column. The bottom flange of the eye beam rests on the horizontal arm of the iron bracket and is bolted to it. The horizontal arm of the bracket extends from the face of the wall about 4 feet over the pavement.

The cantilever ends of the eye beams are joined to each other by a similar eye beam bolted at the end. This was a sound construction.

On the South Quay side the bays are smaller. There are 4 of these cantilever beams, there are 3 bays on the South Quay side, the span there is around 14 feet. The construction on this side is similar to that on the St. Vincent Street side.

The whole gallery was tied to the end of the eye beams from the north on St. Vincent Street side to the east end on the southern side. Running across the span of the bay at right angles to the eye beams were 2" x 12", wooden floor joists spaced at about 20" - on top of that were nailed floor boards running across the width of the balcony. In this sort of construction the floor joists would not be attached to the beams.

I visited the premises yesterday afternoon. I saw the southern side of the premises. I saw the floor, the wooden floor joists, the eye beams, the iron brackets and the tie beams. I saw them yesterday afternoon (8th March 1958). They were sound and in place. I stood underneath it. The floor joists were in line and the flooring was in place and intact.

There are 4 steel cantilever beams on the south side. The cantilever eye beam goes into the column. The normal practice it would be about 6" to 8" inside. The vertical end of the bracket is bolted into the face of the column. The 4 cantilever eye beams with their brackets on the south face of the building had not moved and were sound. The only parts of the structure on the south that I would call beams now are the cantilever frames and their beams. Those are the only gallery beams on the southern end.

In the Supreme Court

Plaintiff's Evidence in Rebuttal

No. 14

Evidence of Rupert Douglas Archibald.

Examination - continued.

Witness referred to H.1. They can be seen in this photo. These beams show no sign of having been raised at all. They were perfectly sound and intact.

If these beams had moved at all, the effect would have been seen by cracking of the concrete plaster, the wooden floor joists would probably have showed signs of shifting and the steel beam itself would probably have been bent out of its horizontal position at some point of its length. I saw no such sign to indicate a shifting of any beam.

The whole of the floor of the southern gallery is intact apart from 2 broken floor boards. The condition of the gallery in the 2 bays at the northern end of the building on St. Vincent Street is perfectly sound in relation to floor boards, floor joists, steel beams and iron brackets. The balustrade has been demolished.

The cantilever steel beam and the iron bracket to each column in the other bays along the western side of the building are still there and are sound. They are all intact. I see no signs of cracking anywhere. This was the condition they were in as regards strength on the 27th November, 1958.

From my visit of the 27th November, 1958 the general impression I formed from my view from the plaintiff's premises and the streets and the pavement was that the main damage had been done to the balcony and the parapet wall, and that the main building as a whole had suffered minor damage.

H.1 gives a general impression of what I saw on my visit of the 27th November.

Witness referred to H.3. This more or less represents the condition I saw on my first visit on the 27th November, 1958.

I paid two subsequent visits to the premises on the 19th December, 1958, one in the morning the other in the afternoon.

The upper storey of the building was then in the process of demolition. They were engaged in removing the internal partition of the various offices. The ceiling of the offices was composed of 2" x 4 " wooden ceiling joists - at about 2'6" centres placed across the spans on the bottom leg of the bottom chord of each truss. I made a plan of

one of these bays as an illustration. Plan admitted into evidence without objection and marked 'N'. I made it from notes and measurements taken on various visits to the premises. The bottom chord is composed of two 3"x 3"x¼" steel angles. It is the 3" legs that take the ceiling.

Question: When they removed the ceiling joists and some of the ceiling itself, what did you see?

Answer: Subsequent to the 19th December, I paid regular visits at the request of the plaintiff.

I saw more and more of the steel trusses as time went on. During these visits it became apparent that the trusses were in their true alignment. As time went on I could observe them better.

The only damage I saw was to the 4th truss from the northern end - at the end of the 3rd bay - towards the apex of the truss at the top chord on the west side. The top chord was bent about ⅓ way down from the apex.

I connected this bend in this top chord to what I had seen on my first visit, via., what appeared to have been a blow caused by flying debris. This member of the truss could be replaced or left in. It is still in use in the new roof, i.e. the lowered roof. As long as there is no distortion of the various joints and there is no sign of fracture there is no reason why it cannot be used.

The wooden purlins appeared to be in place. They didn't seem to be displayed. The condition of the galvanize was as I had seen it on my previous visit, good. From what I could see the damage to the roof was negligible. I made visits to the premises on the 16th February, 1959 in the morning and afternoon.

The demolition had been completed. The roof had been lowered except for the 3 northern bays. In the original roof the bottom chord was approximately 14 feet above first floor level. The bottom chord of the new roof is 2'9" above first floor level so that the roof has been lowered approximately 11'3".

There is now a parapet wall along the western

In the Supreme Court

Plaintiff's Evidence in Rebuttal

No. 14

Evidence of Rupert Douglas Archibald.

Examination - continued.

and southern side. On my visits prior to the 16th February 1959 the staircase was generally sound.

On the last flight towards the top some of the kick boards showed signs of rot. I didn't make a detailed inspection. The staircase showed no sign of damage by the wind. Between my visits of the 19th December and the visit of the 11th February, a new upper flight of stairs had been built. Except for the 2 northern bays the entire floor and balustrade had been removed. The original balustrade was stronger than the present temporary one.

Structurally the condition of the structure surrounding the area of the plaintiff's office is sound - but there is a further bay - the one next going south - where the original roof has been maintained. There is a face open which makes it dangerous. If a strong wind occurred that portion of the roof including the plaintiff's might be lifted. This condition was caused by not completing the lowering of the roof. If they hadn't lowered the roof this wouldn't have come about.

By Court: I do not consider the lowering of the roof was necessary.

It is possible to enclose the exposed portion so as to remove the danger from wind.

The main part of the building is approximately 50 feet wide and 150 feet long. At the south western corner the corner is sliced off. The floor space is approximately 7000 sq.ft. each, the gallery is about 200 feet long x 8 feet wide approximately 1550 sq.ft.

The main steel beams supporting the first floor are 15" x 6" x $\frac{3}{8}$" steel eye beams. The span is approximately 24'9".

I would describe the building as of strong construction i.e. the main building. On the days I inspected it, it was sound. The hip portion of the roof is composed of main timbers with similar purlins as in the other part of the roof.

I would describe the description given by the witness Bleasdell as normal construction when he said that the hip roof was cast into concrete.

My estimate of cost of repairs to the whole

including demolition and clearing of debris, repairs to roof, to eave-gutters and down pipes, removal of former parapet wall and replacement by a hollow clay tile wall, repairs to any perimeter beams if necessary the rebuilding of the balcony to a similar condition as before storm and any painting of new wood required, is 14,200. This does not include repairs to electrical or telephone installations.

I have seen a crack in the perimeter beam in second bay from north on west side. That beam is 9" thick x 15" deep. The top of the beam is at the top of the columns at level of the bottom chord and its position is generally central in 20" width of the column. The beam is composed of one second hand railway rail placed in the centre of the width of the beam and about 2 inches from the bottom - surrounded by concrete. I have examined this beam.

There are cracks on the beam about 4 feet from the northern column face. This crack continues across the width of the beam underneath and on the inside face it's also cracked at the side of the beam. These cracks are on the concrete. The beam has maintained its normal shape. This beam could be repaired.

The construction of the perimeter beam is one that existed around and prior to the first World War. Those beams have a prime function to support the parapet wall and to assist in the ceiling off of the roof. and forming of the eave-gutters.

In a building of this type it is not a prime function of the perimeter beam to stiffen the columns although they do in fact do so.

In this particular instance the existing columns are strong enough to carry out the functions expected of them i.e. to bear the weight of the roof. It is good practice to finish off with the perimeter beam. The crack in the beam could have been repaired.

By Court: From my experience I would be very surprised if the rail reinforcement was cracked. If it cracked it would have lost its shape.

The load it was carrying - mainly the parapet wall - was a continuous load and not an exceptionally heavy load for a beam of that construction. A

In the Supreme Court

Plaintiff's Evidence in Rebuttal

No. 14

Evidence of Rupert Douglas Archibald.

Examination - continued.

whole beam between 2 uprights could have been removed at a cost of approximately $200. These beams could be repaired and replaced without taking down the whole roof.

I don't agree with Mr. Moore's opinion that the replacement of these beams would be patchwork and would not be effective structurally. I consider as minor the damage to the particular beam I examined. I would have the damage cleaned out and grouted. The load on the beam did not amount to more than about 200 lb per foot. That is the simplest form of load on a beam supported on either end. This crack was about 4 feet from one end - the span is about 14'9" - roughly around the middle third point.

The concrete in a joint subjected to simple bending is primarily concerned with counteracting the shear force. The greatest shear force acts just where the beam enters the column. The shear force at either end of the parapet wall is not more than 3000 lbs. That is not a very great shear force for a beam of that dimension. The shear force at the point of the crack would probably be only 1000 lbs.

A beam in simple tension is not affected in any major way by the cracking of the concrete so long as the steel reinforcement itself is undamaged. At two junctions at the end of the beam where it enters the columns there is no indication of cracking - the plaster is not cracked, it's smooth and clean.

10th March, 1959.

Question: Could you give us your break down as to how you arrive at your estimate of cost of repairs?

Butt objects. Objection upheld.

I have a breakdown of the estimate. Witness referred to plan - Ex. 'N'.

From my examination and the nature of the construction I found, I don't accept Mr. Moore's statement that the roof had risen 2 or 3 inches from its anchorage.

The anchorage going into the main columns

consists of 2 bolts of ¾" diameter. If the part of the roof supported by the steel trusses had risen 2 - 3 inches I would expect any one or all of these 3 conditions after the shock was over:-

(1) The nuts on the anchor would have been wrung off, which would permit movement of the base plate of the truss or the bending or shearing of the anchor bolts above the concrete.

(2) Distortion in the trusses - the main and secondary members bent or twisted out of their original shape and shearing of their connections which are gusset plates with bolts.

(3) That the 6" x 3" wooden purlins anchored to the top chord members of the trusses by means of an angle and 4 bolts - 2 going into the purlin and 2 into the top chord - I would expect that these purlins at their connection would have been ripped by the movement and as a result after the shock was over the galvanized sheet covering would have been disturbed so that it would not have presented the uniform appearance that I saw on my first visit on the 27th November.

With regard to the hip portion of the roof, in this type of construction it is customary to connect the main wooden timbers to each other by bolts and the wooden purlins would probably be connected by means of large nails.

I accept that the hip roof was struck by the wind, that that was where the main impact of the wind occurred and that with an old timber structure like that there would be vibration.

(Butt objects to this evidence on the ground that it was not put to the defendants' expert witness, Mr. Moore, and submits that the witness should not be allowed to give evidence of matters not put to Mr. Moore.)

(Objection overruled)

I did not see any evidence to support this rise of 2" to 3" of which Mr. Moore spoke.

By Court: I had no opportunity of examining columns and base plates other than those in the plaintiff's area.

In the Supreme Court

Plaintiff's Evidence in Rebuttal

No. 14

Evidence of Rupert Douglas Archibald.

Examination - continued.

After the roof had been lowered as I came up the stairs I looked at the trusses themselves and saw that their alignment to each other was regular. I was looking at the trusses during the process of lowering over a period of time and again after they had been lowered and put into the new position.

I made an examination of the truss anchorage of two of the columns in the plaintiff's area. There is one in his premises and one between his premises and the head of the stairs. Towards the north end I would expect evidence of distortion in the trusses rather than in the anchorage. I saw no such distortion.

When I inspected the building the gallery roof was off. I saw sections of the window framing on the top of the balustrade up to plate level. The framing was generally of flimsy construction. I did not see all the uprights but those I saw were notched into the balustrade sill.

My general opinion with regard to the main building was that it was sound. I recommended that the parapet wall should be demolished and rebuilt. It is a simple operation. The balustrade, flooring and main steel frame of the balcony I consider to be of sound and strong construction. From balustrade level up to the roof I consider to be of light construction. The former could be retained but the latter would have to be newly constructed. It would be sound construction to replace it.

Cross-examination.

Cross-examined Wells:

I paid three main visits for the purpose of inspection of the building:

(1) 27/11/58

(2) 19/12/58

(3) 16/2/59.

Between the second and third visits I paid several short visits. Between the 19/12/58 and the 16/2/59 the staircase was altered. I did notice the staircase between those dates. The new staircase was probably constructed early in the new year.

I went there on the 27/11/58 at the Plaintiff's

request and not for the purpose of preparing evidence to be given in a Rent Restriction matter. I knew nothing about this.

The plaintiff asked me if I could make a survey of the building for him. I asked him if he would get the necessary permission for me. My survey did not depend on my getting the necessary permission. I told him I could survey from his premises. I could not make a proper and complete survey unless I had access to all parts of the building because I would be at a disadvantage. I inspected all it was possible for me to inspect. I observed the demolition and the various parts of the building that were lowered and reassembled.

On the 27th November, 1958 although I could not get access to all the premises, I nevertheless made a general inspection on that date of the parts to which I had access and from the outside of the building. I made notes of this first inspection. I believe I have them.

Witness refers to a file. I have got the notes in my possession. I did make some notes of the general condition of the building. I did not get a ladder and examine the ceiling of the plaintiff's office on that day.

On the 27th November, 1958 I had walked with the plaintiff as far as the offices of the Trinidad Automobile Association. On returning we discussed the question of my getting permission to survey the premises. We discussed the question of repairs to the plaintiff's portion of the premises among other things.

Question: What repairs did you discuss with regard to his portion?

Answer: The plaintiff was concerned about the fact that his portion of the balcony and offices was now uncovered and exposed to the weather. He wanted to know whether it was a simple thing to repair the balcony, so that his portion would get covered. On that date I don't remember seeing the movable plywood partition.

We did discuss the question of rain. He told me that he was affected by rain blowing in.

In the Supreme Court

Plaintiff's Evidence in Rebuttal

No. 14

Evidence of Rubert Douglas Archibald.

Cross-examination - continued.

He made no mention of rain coming through the roof. He was complaining about an eave-gutter and down pipe at the north western corner causing water to fall on his gallery near the counter.

On the 19th December I went back. I had observed that demolition. I believe I got in touch with the plaintiff's legal advisers.

I was first shown the City Engineer's notice just prior to the 27th November 1958. On the 19th December, 1958 I confined myself to the stairway, the portion of the balcony leading to the plaintiff's office, the plaintiff's offices including the balcony. I also walked around on the streets outside and surveyed.

If I made any notes on that visit, they were very general. I have not got them.

Between the 19th December, 1958 and 16th February 1959 I might have paid 6 - 8 short visits.

Between the 27th November, 1958 and the 19th December 1958, I paid about three short visits. On these short visits I always confined myself to the stairway, the hallway, the access to the plaintiff's office and the plaintiff's office.

The 16th February was my third main visit. The purpose of it was to finalise the writing of my report.

On that day I knew that there was something like an injunction being prepared. I was asked to submit a proper report. As a result I made this visit on the 16th to finalise my report. I went back to take specific measurements where possible and to check up on everything.

I have in my possession written notes relating to this matter prior to the 16th February, 1959. These are my rough notes. Probably, I began to make these notes just prior to the 16th, or the 16th and thereafter. I started to make these notes after I heard of the injunction. The majority of the notes are reflected in the plan I drew, exhibit 'N'.

I never submitted interim reports in writing before I started making these notes I have produced.

I have seen the City Engineer's notice A.6. I

have seen similar notices before. This notice refers to No. 2 St.Vincent Street. I asked for clarification of it and was advised to report on the whole premises Nos.2 and 4 St. Vincent Street.

I say that from the top portion of balustrade to roof level was of flimsy construction. I never saw the roof. One of the theories I have is that it was at first an open balcony and that the windows and roof were added later, another one is this, that there may have been a roof and balustrade but no windows at all. I didn't see any upright running through from the floor to the roof.

The portion of the balustrade and windows remaining that I can say I examined as such rather than looked at was the portion in the plaintiff's premises. I looked to see what the form of construction was.

Witness referred to H.3. I see the upright in the centre between the glass window and the glass louvres. I must have looked at it. It did not go down to the floor. I don't recall particularly examining the upright on the right.

My opinion is that this upright did not go down to the floor. My conclusion was that all the uprights were notched into the balustrade. As shown in the picture, the portions of the balcony above the balustrade were very loosely tied and could come down quite easily - could also be blown down quite easily by another strong wind.

On the 27th November 1958 I tested the balustrade in the way I have described. That was about my main examination. I also examined the framing of it and also the distance apart of the uprights. I didn't make any more physical examinations.

By Court: If I were told that there were one or two uprights going down to floor level along the whole length of the balcony, I could not deny that. I was concerned with the construction of it as a whole.

I heard Bleasdell give evidence about bringing down the balustrade by tapping. Bleasdell's evidence would not be consistent with the balustrade being firmly constructed. I never heard of tapping with a 10 or 14 pound sledge. The HI-RIB plaster would stiffen the balustrade frame. The balustrade

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Plaintiff's Evidence in Rebuttal

No. 14

Evidence of Rupert Douglas Archibald.

Cross-examination - continued.

in cross-section is of quite heavy weight. Once you get it moving, it would become easier to move as you go along.

I said that the columns in themselves were strong enough to stand the loads and stresses on them. At the same time the perimeter beams did afford additional strength.

I have heard evidence given that there were 3 cracks in the perimeter beam. I saw one of them, not the other two.

Question: Can you explain how they came to be cracked?

Answer: The three beams may have been cracked prior to the storm.

I am willing to accept that the crack I saw was a recent one, that it could have been caused by the storm.

Question: If there were 3 beams cracked how might this have happened?

Answer: Perhaps a heavy piece of debris, e.g. timber struck there.

The perimeter beam is covered by either the parapet wall, the guttering or the edge of the galvanize, and one of these should show the impact if a heavy object cracked it.

When I first saw the crack the parapet wall was there. I examined it only from underneath and the front in the first instance. The roof was then on.

Luncheon adjournment.

Court resumes at 1.30 p.m.

What I saw showed no indication of anything heavy having hit the perimeter beam.

By Court: I don't think that the structure was damaged by the storm - thus giving rise to these cracks.

I have done no special work in connection with

damage to buildings by storm or bombs. The only work I have done on that is that I have seen factory structures in Canada designed to withstand bombing blasts, etc.

In late 1954 we had a severe earthquake shock. I interested myself in one or two places I was told had been affected and then I read a report written by one of my brother engineers. My other knowledge comes from the reading of journals etc. I have not had to do with actual repair work as a result of hurricane or bomb damage.

The strength of a structure like this lies in the fact that it is all connected up. It would be described as a monolithic structure.

A storm of this type would change direction. You could get a whirlwind effect. This freak wind could be described as in the nature of a small hurricane. This type of changing force would tend to cause vibrations. There is also a possibility of shearing stresses in the horizontal plane.

Question: Did you think that vibrations or shearing stresses if they got strong enough could produce cracks in the perimeter beams?

Answer: I would say that if we had a full fledged hurricane over a longer period of time the roof might have lifted in part or in whole or be damaged or twisted.

A force of sufficient strength could produce the cracks in the perimeter beam that have been spoken of. A wind of sufficient violence might tear the whole roof off, it could shear the angle bolts and tear the trusses away. Another type of wind might take the covering away and tear the framework up, all types of freak effects might take place.

Part of the trouble is caused by the difference in pressure above and under the roof. On the 16th September, 1958 I walked around the damaged area in Port of Spain. The damage was over a narrow twisting area.

All the parapet walls were damaged in the storm with the possible exception of one. My opinion was that the whole parapet wall should be removed. The loosening of the parapet wall was probably due to

In the Supreme Court

Plaintiff's Evidence in Rebuttal

No. 14

Evidence of Rupert Douglas Archibald.

Cross-examination - continued.

the loosening and shaking of the roof rafters, i.e. the balcony roof rafters.

There was a rut right round the parapet wall which had reduced its effective thickness to perhaps half what it had been. There were vertical cracks in the parapet wall in most of the panels. I don't accept that the cracking of the parapet wall was not merely the result of what was going on in the balcony roof but what was going on in the main structure of the building.

I have seen only one perimeter beam cracked about 4 feet from the face of its support. I can't speak about the other beams. I have seen on my inspections that one or two balcony rafters - I feel that if those balcony rafters went out there would be sufficient force to cause the vertical cracks in the parapet wall. If the roof had risen to some extent, then I would not deny that cracks could be produced in the parapet wall - especially at ends on the panels.

By Court: My view is that the wind was not of sufficient strength to produce those effects. I have studied and analysed the after effects of the storm.

Re-examination.

Re-examined Wharton:

If the storm had been sufficiently strong to cause the effects described, I wouldn't have been surprised if the gallery had gone to the extent that only the steel frame would be left. The only part of the balcony that I would have expected to be left would be the steel frame.

The dead weight of the roof trusses, purlins and galvanize would be approximately 40 tons.

The parapet wall was probably cast with the perimeter beam when they were casting it. The wooden plate at the base of the parapet wall was about 1½" thick x 4 inches deep - plate would be put on edge - made of pitch pine. The building was designed to withstand a wind at speed of 80 miles per hour.

Re-cross-examination.

Cross-examined Wells with leave of Court:

I said yesterday that there are buildings with

roofs of different levels. Witness referred to photos B.1 and F.1.

You could bring the lowered roof up to the vertical line of the old roof. You would have to go into the matter and design it carefully. There would have to be a steel frame of some type to rise up and meet the other roof. It would have to be a proper design. It would cost a certain amount of money. You would have to investigate the fact that you are designing a roof with two levels. You might have to strengthen each portion of the roof.

Re-examined Wharton:

That work would be in the ordinary course of engineering practice - nothing extraordinary about it.

In the Supreme Court

Plaintiff's Evidence in Rebuttal

No. 14

Evidence of Rupert Douglas Archibald. Re-cross-examination - continued.

Re-examination

DEFENDANT'S EVIDENCE IN REPLY TO REBUTTAL

Defendant's Evidence in reply to Rebuttal

No. 15

EVIDENCE OF ARTHUR DUDLEY MOORE

No. 15

Wednesday 11th March, 1959

Evidence of Arthur Dudley Moore.

Defendant's witness ARTHUR DUDLEY MOORE is recalled by the Court, sworn states:

Examination by Court.

In Escala and Navarro's office I saw the lifting of the ceiling running back to the entrance - also in the next bay back - North of Escala and Navarro's immediately next to escala and Navarro's - I think it is the Automobile Association. I didn't notice it in any other ceiling. The other evidence of lifting of the main roof was the cracks in the parapet walls and perimeter beam. When one looks at the roof void on entering the trap door you could see the back of the box guttering had been disturbed.

I adhere to my previous statement that the first truss from the southern end must have been torn from its bearings.

It's very difficult with the eye to measure distortion over the whole of the roof.

In the Supreme Court

Defendant's Evidence in reply to Rebuttal

No. 15

Evidence of Arthur Dudley Moore.

Examination by Court. - continued.

With regard to Mr. Archibald's opinion re the way in which damage took place to the fourth truss from the northern end I can't express an opinion because I didn't see which way it was bent.

(Re condition 3) - the rafters on the southern hip were torn by the blast, thus moving the whole of the southern hip in an upward direction. The galvanized roofing was disturbed on the southern end and over the main roof and vent, in reality both of them.

I am not certain how far back the lifting of the roof went. I would say the whole of the roof must have been disturbed. The parapet gutter was disturbed right back. The only way the parapet gutter could be disturbed would be by roof suction the members on which it was built causing the movement of the gutter. It could also be disturbed if material fell vertically into the width of the parapet gutter.

1.30 p.m. resumed.

Butt addresses.

Thursday 12th March, 1959.

Butt continues.

10.45 a.m. Wharton replies.

Luncheon adjournment.

Court resumes at 1.30 p.m.

C.A.V.

No.16

J U D G M E N T

In the Supreme Court

No.16

Judgment of Phillips J. 30th September 1959

TRINIDAD

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO

No.107 of 1959

BETWEEN

ALBERT JAMES MAURITZEN
trading as A.J.MAURITZEN & CO.
Plaintiff

and

GORDON GRANT AND COMPANY LIMITED
Defendant

J U D G M E N T

The Plaintiff is a monthly tenant of the Defendant Company in respect of a portion of the first floor of premises known and assessed as Nos.2 and 4 St.Vincent Street, Port of Spain. The premises occupied by the Plaintiff (hereinafter called "the demised premises") consist of a large room and a portion of a balcony which runs along the whole length of the western side of the building, and are used by the Plaintiff for the purposes of the business of a Customs and freight forwarding agent, which he carries on under the style of A.J. Mauritzen & Co. The tenancy of the demised premises falls within the provisions of the Rent Restriction Ordinance, Ch.27 No.18.

On the 11th September, 1958, there was a windstorm which caused severe damage to several buildings in Port of Spain, including the premises known as Nos.2 and 4 St.Vincent Street, as well as the building known as No.6 St.Vincent Street, which immediately adjoins these premises

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Judgment of Phillips J. 30th September 1959 continued

on their northern side, and is occupied by the Defendant Company for the purposes of its business.

The Defendant Company had the damage inspected by their architect, Mr. A.D. Moore, who held the view that it would not be an economic proposition to have repairs done to the building, and stated at the trial that, in his opinion, necessary repairs would cost between $25,000 - $35,000. By letter dated the 30th September, 1958, the Defendant Company informed the Plaintiff of their intention not to repair the building and forwarded to him a formal notice to quit the demised premises.

The Plaintiff, however, who appears to have been disappointed by the failure of the Defendant Company to commence repairs to the demised premises, in a letter dated the 2nd October, 1958, wrote to the Defendant Company (inter alia) as follows:

> "Meanwhile, as you are aware, we are suffering very serious inconvenience and damage from rain not only from the damaged gallery, but from the leaking roof and gutter spout. These must be repaired immediately, if only temporarily, otherwise we will find ourselves forced to have them done ourselves on your account.
>
> It was noticed by your tenants in 2/4 St. Vincent Street, naturally with great interest, that repairs to your main building which houses your own offices, were effected in record time. We understood your explanation of 'First things first', but did not understand that, as far as we are concerned, this meant 'Never'. We very much regret the tone of this letter, but find it impossible to express ourselves in any other way."

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 Defendant Company in relation to the premises. This notice, a copy of which was forwarded to the Plaintiff as an

enclosure to a letter from the Defendant Company, dated the 7th October, 1958, is in the following terms:

NOTICE

"Your attention is directed to the condition of the building on premises assessed as No.2 St. Vincent Street, Port of Spain, which, as a result of damage done by the high winds some time ago, is as under:-

(a) There is sufficient evidence that the anchorage of the roof of the main part of the building has been affected to such an extent that its resistance to wind can no longer be considered satisfactory.

(b) The parapet wall along the southern and western sides of the building is cracked horizontally where it was bonded to the main walls of the building

(c) The balcony over the footways of South Quay and St. Vincent Street is without a roof and is not tied to the main building which causes the wall enclosing it to be unstable.

(d) There are cracks in the concrete columns and beams on the first floor.

You are therefore required under section 208 (2) of the Port of Spain Corporation Ordinance, Chap.39 No.1, to take down the roof, the parapet wall along the southern and western sides of the building, and the balcony over the footways on South Quay and St. Vincent Street within thirty (30) days of the date of this notice".

All the tenants of the Defendant Company in occupation of portions of the first floor left the premises with the exception of the Plaintiff, who, however, expressed his willingness to leave as soon as he could find suitable alternative accommodation. By letter dated the 9th December, 1958, the Defendant Company wrote to the

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Plaintiff as follows:

"We would refer to our letter of October enclosing copy of notice which we received from the City Council directing us to do certain demolition work on the premises, which you are now occupying as our tenant. We have now been advised that certain parts of the building are in imminent danger of falling. Immediate steps, therefore, are being taken to remove the worst of these dangers. Warning notices are being put up to this effect and (sic) wish to draw these dangers to your attention, staff and customers.

In keeping with our promise that should we hear of any alternative accommodation we would advise you, we understand that Mr. Assee of Hotel Miramar, 52 South Quay, (sic) whom we understand has an office for rent at 90 Frederick Street".

The Plaintiff, however, continued in occupation of the demised premises and on or about the 13th December, 1958, the Defendant Company, in compliance with the requirements of the notice served on them by the City Engineer, began certain demolition work which continued up to about the 4th day of February, 1959, when the Plaintiff issued the Writ of Summons in this action.

By his Statement of Claim the Plaintiff makes certain complaints in connection with this demolition work and claims (inter alia) damages for trespass and/or breach of an implied covenant for quiet enjoyment and/or nuisance arising therefrom.

The principal matters of complaint may be summarised as follows :-

(a) Nuisance from dust, dirt and noise resulting from the demolition work done on portions of the premises not occupied by the Plaintiff.

(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.

(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.

The Defendant Company admits doing certain demolition work on portions of the building not tenanted by the Plaintiff, admits the removal of the balustrade and window frames from the portion of the balcony occupied by him, but claims that this action was justified by the fact that since the date of the windstorm the balcony had become dangerous to the occupiers of the premises as well as to members of the public, and that they acted in compliance with the requirements of the City Engineer's demolition notice. The Defendant Company also counterclaims against the Plaintiff for possession of the demised premises on the ground that the same is required by law to be demolished.

With regard to the Plaintiff's claim for damages for nuisance, it was submitted by counsel for the Defendant Company that while there is evidence of some inconvenience from dust and noise resulting from the demolition work undertaken by the Defendant Company, there was no proof that the inconvenience was such as to amount to an actionable nuisance. According to the evidence of the Plaintiff which has not been seriously challenged and which I accept in relation to this matter, for a period of somewhat more than one month after commencement of the demolition work there was a considerable amount of dust and noise resulting therefrom which caused a great deal of inconvenience and discomfort. The Plaintiff described this state of affairs in the following words:-

"About the 20th December, 1958 and thereafter - before and after Christmas - demolition work was going on - long wooden planks were dropped from one end. There was bound to be noise - plenty of dust. At a certain stage they demolished the

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main pillars of the building with sledges and pickaxes - down to about three feet from the first floor level. Dust and dirt entered my place and covered my papers. This continued for over a month - much more than a month.

.....

The noise was so bad that if you were speaking on the telephone you would have to wait till the noise finished before the listener could hear what you were saying.

The dust got on to your papers. If you dusted at 8 a.m. you would be dusting again at 9 a.m. Old paint and old wood would be full of dust. This sort of disturbance continued daily."

There is also to be considered the Plaintiff's evidence in relation to the operation of the Defendant Company's coffee hulling machine, which had always resulted in a certain quantity of coffee husks entering the demised premises, a state of affairs which, however, was aggravated by the demolition of the eastern wall of the building south of the demised premises. This aggravated situation was continuing up to the date of trial of this action.

It is important to bear in mind that certain steps were taken by the Defendant Company to reduce the inconvenience from noise and dust suffered by the Plaintiff. For this purpose the Defendant Company put up a row of galvanized sheets over the slats on the southern side of the demised premises. These sheets were removed after a period of about a month, at which time the noise and dust resulting from the demolition work were very much less than before.

In Bedford v. Leeds Corporation (1913) 77 J.P. 430, Sargant, J. during the course of his judgment says, at p.433:-

"In considering whether the noises so described, even after allowing for some

natural exaggeration on the part of the witnesses, constitutes a nuisance, I have had regard not only to the well-known definition of a nuisance by KNIGHT-BRUCE, V.C., IN Walter v. Selfe, (1851) 4 De G&S 315 as an "inconvenience materially interfering with the ordinary comfort physically of human existence", but to the two following apposite passages from the judgments of POLLOCK, C.B., in Bamford v. Turnley, (1862) 3 B.& S. 79, and EARLE, C.J., in Cavey v. Ledbetter (1863), 13 C.B. (M.S.) 476.

The learned CHIEF BARON said this, viz:

> 'I do not think that the nuisance for which an action will lie is capable of any legal definition which will be applicable to all actions and useful in deciding them. The question so entirely depends on the surrounding circumstances - the place where - the time when - the alleged nuisance, what - the mode of committing it, how - and the duration of it, whether temporary or permanent, occasional or continued - as to make it impossible to lay down any rule of law applicable to every case, and which will be also useful in assisting a jury to come to a satisfactory conclusion. It must at all times be a question of fact with reference to all the circumstances of the case.'

The learned CHIEF JUSTICE says this:

> 'The affairs of life in a dense neighbourhood cannot be carried on without mutual sacrifices of comfort, and in all actions for discomfort the law must regard the principle of mutual adjustment, and the notion that the degree of discomfort which might sustain an action under some circumstances must therefore do so under all circumstances is as untenable as the notion that, if the act complained of was done in a convenient time and place, it must therefore be justified whatever was the degree of

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annoyance that was occasioned thereby'.

Counsel for the Defendant Company placed great reliance on Harrison v. Southark and Vauxhall Water Co., (1891) 2 Ch. 409, which was an action for nuisance arising from certain operations of the Defendant Water Company carried out in pursuance of statutory powers. It is clear from the judgment that the same principle would have been applied to the case of a private owner of property acting in pursuance of the ordinary legal rights attaching to his ownership.

Vaughan Williams, J. says at pp.413-414:-

> "In the first place, it seems to me that if the Defendants had without statutory authority sunk this shaft and done this pumping for any lawful and ordinary purpose in the exercise of their powers as private owners of the land they would not have been responsible as for a nuisance. It frequently happens that the owners or occupiers of land cause, in the execution of lawful works in the ordinary user of land, a considerable amount of temporary annoyance to their neighbours; but they are not necessarily on that account held to be guilty of causing an unlawful nuisance. The business of life could not be carried on if it were so. For instance, a man who pulls down his house, for the purpose of building a new one no doubt causes considerable inconvenience to his next door neighbours during the process of demolition; but he is not responsible as for a nuisance if he uses all reasonable skill and care to avoid annoyance to his neighbour by the works of demolition. Nor is he liable to an action, even though the noise and dust and the consequent annoyance be such as would constitute a nuisance if the same, instead of being created for the purpose of the demolition of the house, had been created in sheer wantonness,

or in the execution of works for a purpose involving a permanent continuance of the noise and dust. For the law, in judging what constitutes a nuisance, does take into consideration both the object and duration of that which is said to constitute the nuisance: Ball v. Ray Law Rep. 8 Ch.467. It seems to me, therefore, that the Defendants are, to say the least, placed by their statute in the same position as private persons. The statute, by making the sinking of the shaft intra vires, and therefore lawful, has enabled the Defendant company lawfully to do that which private persons may do without any statutory authority. That being so, it seems to me that the obligations of the Defendant Company in respect of the sinking of the shaft are neither greater nor less than those of a private person, and that a private person would not in similar circumstances be held to have created a legal nuisance by reason of the annoyance caused to his neighbours in the pumping for the purpose of sinking the shaft, unless it could be shewn that he had neglected to take all reasonable precautions for mitigating the annoyance to his neighbours."

Reference may also usefully be made to the judgment of the Court of Appeal in Andreae v. Selfridge & Co. Ltd., (1937) 3 A.E.R. 255, wherein at p.264, Sir Wilfred Greene, M.R. stated the law relating to nuisance from temporary operations as follows:

"But it was said that, when one is dealing with temporary operations, such as demolition and building, everybody has to put up with a certain amount of discomfort, because operations of that kind cannot be carried on at all without a certain amount of noise and a certain amount of dust. Therefore, the rule with regard to interference must be read subject to this qualification, and there can be no dispute about it, that,

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> in respect of operations of this character, such as demolition and building, if they are reasonably carried on, and all proper and reasonable steps are taken to ensure that no undue inconvenience is caused to neighbours, whether from noise, dust, or other reasons, the neighbours must put up with it."

In the light of the above-mentioned principles it seems to me that the allegations of the Plaintiff in respect of discomfort and inconvenience arising from dust and noise caused by the Defendant Company's demolition operations are not such as to give rise to an actionable nuisance, and the Plaintiff accordingly fails on this part of his claim.

I turn now to consider the Plaintiff's claim against the Defendant Company in relation to their alleged interference with the stairway by which the Plaintiff gained access to the demised premises. The original staircase giving access from the ground floor to the first floor of the premises was completely within the building and not exposed to the weather. It was boarded up on each side and had handrails. It was in two sections. On entering the ground floor from St. Vincent Street one turned left and mounted the first section of the staircase. One then turned left again and ascended the second section.

As a result of the removal of the greater portion of the roof, and its being lowered to a height slightly above the level of the first floor, it became necessary to remove the second section of the staircase and replace it by an uncovered stairway which turns to the right from its junction with the first section of the original staircase. The result is that the new stairway leads to a point on the first floor nearer to the demised premises then was the case with the old stairway, and it is to be noted that, had the second section of the old stairway been still in use, any person going to the demised premises would have been exposed to the weather for some distance on account of the fact that the roof of the balcony on the western side of the building was completely destroyed by the windstorm of the 11th September, 1958.

Additional matters of complaint are that the new stairway has no handrails, that its width is approximately two-thirds of that of the old one, and that at the top of the stairway there are two projections of pieces of board which render it unsafe or at least inconvenient.

It was submitted by counsel for the Plaintiff that a landlord's implied covenant for quiet enjoyment operates so as to protect the tenant not only in relation to his enjoyment of the actual subject-matter of the tenancy, but also of all ancillary rights connected therewith, one of which is the right of access; and it was contended that the acts in question constitute a breach of the covenant and/or an actionable nuisance.

Counsel referred to the case of Allport v. Securities Corporation, (1895) 64 L.J. Ch.491, in which the Court made a mandatory order for the reinstatement by a landlord of a staircase which he had, in a high-handed manner and without any semblance of justification, removed and replaced by another staircase which was a circuitous and less convenient route. In my opinion, the circumstances of that case are quite different from those under consideration, and I consider the decision therein inapplicable to the present case.

Counsel for the Defendant Company, on the other hand, while admitting that the taking away from a tenant of his means of access to demised premises would be a breach of the landlord's implied covenant for quiet enjoyment, submitted that the Plaintiff in this case was never deprived of access to his premises that he had no legal right to access by a stairway covered by a roof, that the new staircase provided a less circuitous means of access to the demised premises and that the alleged interference with the same does not amount either to a breach of the implied covenant for quiet enjoyment or to an actionable nuisance.

In this connection counsel relied on Phelps v. London Corporation; (1916) 2 Ch. 255; in which the principles referred to in Harrison v. Southwark and Vauxhall Water Co., (ubi supra)

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and Manchester, Sheffield and Lincolnshire Rly. Co. v. Anderson, (1898) 2 Ch. 394, 401, were applied. In the last mentioned case, Lindley, M.R., during the course of his judgment in the Court of Appeal said, at pp.401, 402 :

> "I will only add a few words about the covenant for quiet enjoyment because counsel for the Defendant urged us to go to an extent rather alarming to real property lawyers. I take it that a mere temporary inconvenience caused by a lessor, not in depriving his tenant of a right of way, but in rendering his access less convenient than it was, is not a breach of covenant for quiet enjoyment. A temporary inconvenience which does not interfere with the estate or title or possession is not, to my mind, a breach of covenant, nor is there any case that goes anything like the length required to shew that it is. Even the judgment of Fry L.J., in the case that carried it farthest, Sanderson v. Berwick-upon-Tweed Corporation 13 Q.B.D. 547,551, in which he says that anything which substantially interferes with the enjoyment by the tenant is a breach of that covenant, must be taken with reference to the facts then before the Court, which were that water was poured on the land demised so as to interfere with the enjoyment of the demised property."

In my judgment, the circumstances under consideration are not such as to found a claim either for breach of covenant for quiet enjoyment or for nuisance, and the plaintiff accordingly fails on this branch of his claim.

The next issue that arises for consideration is that relating to the Defendant Company's admitted removal of the balustrade and windows from the portion of the balcony forming part of the demised premises. It is to be observed that this is the only operation of the Defendant

Company alleged to be done actually on the demised premises. Evidence was given on behalf of the Defendant Company by a witness called Daniel Bleasdell, a foreman carpenter, who was engaged in the demolition operations, to the effect that he obtained the permission of the Plaintiff to demolish the balustrade and windows. I do not, however, believe this evidence and accept the Plaintiff's testimony that all he consented to was the removal of the frames of some windows which had been damaged by the windstorm.

It was contended on behalf of the Defendant Company that they had a legal right to enter the demised premises and do the acts in question, the foundation for this right being alleged to be the fact that the dangerous condition in which the windstorm had left the balcony, which overhangs the public highway, imposed on the Defendant Company the obligation of taking steps to prevent harm accruing to persons using the said highway.

A considerable amount of evidence was adduced by each party in this case with regard to the question as to the extent to which the balustrade of the balcony on the western side of the building as a whole and particularly the portion of it within the demised premises was rendered dangerous by the effects of the windstorm. I consider that no useful purpose would be served by analysing that evidence in detail, and that it is sufficient to state that I accept the evidence on behalf of the Defendant Company in connection with this matter, and find as a fact that the condition of the balustrade and windows of the balcony within the demised premises after the occurrence of the windstorm did constitute a danger to passers-by, as well as to persons entering the demised premises. In this connection it must be borne in mind that the public had free access to the portion of the balcony within the demised premises, which the Plaintiff uses for the purposes of his business.

Counsel relied on Mint v. Good (1950) 2 A.E.R. 1159, the head note of which reads (in part) as follows :

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Judgment of Phillips J. 30th September 1959 continued

"A wall separating from a public highway the forecourt of two houses within the Rent Restriction Acts collapsed on the public footpath and injured the infant Plaintiff who was thereon. The defective condition of the wall, which was due to lack of repair could have been ascertained by inspection. The houses were let on weekly tenancies under oral agreements to different tenants. No express provision was made in the agreements with regard to the liability for repairs and the landlord reserved no right of entry to effect repairs, but he had from time to time carried out repairs. In an action for damages against the landlord, HELD: in the absence of evidence or of express stipulation to the contrary it was to be implied in an agreement for a weekly tenancy which was silent on the matter a term that the premises let would be kept in a reasonable and habitable condition by the landlord and that he would have the right to enter and effect necessary repairs; the duty of the landlord in the present case was to see that the wall was as safe as reasonable care could make it, and it was immaterial whether or not he had knowledge of the danger of its collapsing; and, therefore, he was liable to the infant Plaintiff in damages."

It seems to me that Mint v. Good is directly applicable to the circumstances under consideration, and not the less so because it deals with the case of a weekly tenancy. In that case Sommervell, L.J. (as he then was) said at p.1162:

"Counsel for the Defendant referred to those words, "the landlord has expressly reserved to himself." It seems to me that the same principle must apply if a landlord has reserved to himself the right, whether he has done so impliedly or expressly. I cannot envisage any principle by which a landlord should be in one position in the case

of an express reservation and in a different position in the case of an implied reservation. The question, therefore, here is whether, in the circumstances, a right to enter on and view the premises and do necessary repairs is to be implied. I would have said that there is no term which would be more easily and more necessarily implied by law in a tenancy of this kind than a right in the landlord to enter, to examine the premises, and to do necessary repairs. It must be in the contemplation of both parties to a weekly tenancy that the tenant will not be called upon to do repairs, although the Rent Restriction Acts have rather altered the position. Both sides must contemplate as the basis of the contract that the house will be kept in a reasonable and habitable condition by the landlord and not by the tenant, and, although the landlord does not bind himself to do so, both sides contemplate that he will have the right to enter and look after his property by doing repairs."

And Denning, L.J. (as he then was) said at pp.1165-1166 :

"The law of England has always taken particular care to protect those who use a highway. It puts on the occupier of adjoining premises a special responsibility for the structures which he keeps beside the highway. If those structures fall into disrepair so as to be a potential danger to passers-by they become a nuisance, and, what is more, a public nuisance, and the occupier is liable to anyone using the highway who is injured by reason of the disrepair. It is no answer for him to say that he and his servants took reasonable care, for, even if he has employed a competent independent contractor to repair the structure, and has every reason for supposing it to be safe, the occupier is still liable if

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No.16

Judgment of Phillips J. 30th September 1959 continued

the independent contractor did the work badly: see Tarry v. Ashton (1876), 1 Q.B.D.314. The occupier's duty to passers-by is to see that the structure is as safe as reasonable care can make it - a duty which is as high as the duty which an occupier owes to people who pay to come on his premises. He is not liable for latent defects which could not be discovered by reasonable care on the part of anyone, nor for acts of trespassers of which he neither knew nor ought to have known: see Barker v. Herbert (1911) 2 K.B.633; but he is liable when structures fall into dangerous disrepair, because there must be some fault on the part of someone for that to happen and he is responsible for it to persons using the highway, even though he was not actually at fault himself. That principle was laid down in this court in Wringe v. Cohen (1939) 4 All E.R. 243, where it is to be noted that the principle is confined to "premises on a highway".

The question in this case is whether the owner, as well as the occupier, is under a like duty to passers-by. I think he is. The law has shown a remarkable development on this point during the last sixteen years. The three cases of Wilchick v. Marks & Silverstone (1934) 2 K.B.56; Wringe v. Cohen (1939) 4 All E.R. 241; and Heap v. Ind Coope & Allsopp, Ltd.(1940) 3 All E.R. 634; show that the courts are now taking a realistic view of these matters."

For the reasons indicated I agree with the submission of counsel for the Defendant Company. It was urged on behalf of the Plaintiff that, assuming that the balustrade and windows were in a dangerous condition, the Defendant Company were under a liability to the Plaintiff to replace them and were not justified in merely removing them. I am unable to accept this submission for which, in my view, there is no supporting authority.

Accordingly, in my judgment, the Plaintiff also fails on this part of his claim.

I have now to consider the Defendant Company's counterclaim for possession of the demised premises.

The contractual tenancy having been duly terminated by notice to quit, were it not for the operation of the Rent Restriction Ordinance, Ch.27 No.18, the Defendant Company would be entitled to possession.

The Defendant Company claims that the case falls within the provisions of section 14 (1) (L) of the Ordinance in accordance with which the Court may make an order for possession if the demised premises are required by law to be demolished, and bases its claim on the demolition notice, dated the 4th October, 1958, served on them by the City Engineer, under the provisions of section 208(2) of the Port of Spain Corporation Ordinance.

Reference was made to a judgment of the Full Court of this territory dated the 21st October, 1958, in the appeal of Lalchān Pooran vs. Kuar Singh and others, No.164 of 1958, which was an appeal against the refusal of a magistrate to make an ejectment order against the tenants of certain premises, the landlord of which had been served by the Town Engineer of San Fernando with a demolition notice, in accordance with the provisions of sub-section (1) of section 201 of the San Fernando Corporation Ordinance, Ch.39 No.7, which is in identical terms (mutatis Mutandis) with those of section 208 of the Port of Spain Corporation Ordinance.

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

> "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 of occupation, or to be from any cause whatever in a structural condition dangerous or prejudicial

In the Supreme Court

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Judgment of Phillips J. 30th September 1959 continued

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."

In Pooran's case it was maintained by the tenants at the hearing before the magistrate that the building in question was not in a dangerous state of repair, and was not required by law to be demolished. The magistrate, after hearing evidence on both sides as to the condition of the building, held that it was not in a dangerous condition and was not required by law to be demolished, and accordingly refused to make an ejectment order in favour of the landlord.

The Full Court, however, reversed this decision, and held that (a) the issue as to whether or not the building was in fact in a dangerous condition was not one upon which it was open to the magistrate to adjudicate and (b) the mere service on the landlord of the demolition notice constituted a requirement by law for demolition of the building within the meaning of section (14) (1) (1) of the Rent Restriction Ordinance.

It was conceded by counsel for the Plaintiff that the decision in Pooran v. Kuarsingh and ors. is binding on this Court; and this being so, it seems clear that the City Engineer's notice of the 4th October, 1958 constitutes a requirement by law for demolition of the building for the purposes of section (14) (1) (1) of the Rent Restriction Ordinance.

The following considerations were, however, also urged on behalf of the Plaintiff:-

(1) That the demolition notice cannot be held to relate to the demised premises, and,

(2) That the notice itself is defective and does not satisfy the requirements of section 208 (2) of the Port of Spain

Corporation Ordinance.

In support of submission (1) counsel relied on the fact that whilst the notice purports to relate to the building on premises assessed as No.2 St.Vincent Street, Port of Spain, the demised premises are in reality the northernmost part of a building known as No.4 St. Vincent Street, which adjoins on its northern side a building known as No.2 St. Vincent Street.

The true position, however, is that the premises known as No. 2 and 4 St. Vincent Street are structurally one building and are assessed as a single entity for rating purposes, and it is to be observed that under cross-examination the Plaintiff stated that the number of the demised premises is 2 and 4 St. Vincent Street, and that throughout the correspondence between the parties the demised premises are regarded as being part of the premises situate at Nos.2 and 4 St. Vincent Street, Port of Spain.

In these circumstances it seems to me that it is clear that the building described in the demolition notice as being on premises assessed as No.2 St. Vincent Street, Port of Spain, is the same building which is on premises in fact assessed as Nos.2 and 4 St. Vincent Street, and that this slight mis-description cannot be held to vitiate the notice in relation to its application to the demised premises.

In support of submission (2) it was argued that there is nothing on the face of the notice to show that the building in question was "deemed" by the City Engineer to be dangerous, which is the prerequisite for issue of the notice as stipulated by section 208 (2) of the Port of Spain Corporation Ordinance.

It seems to me that on a fair construction of this sub-section there is no necessity for the notice specifically to state that the building was deemed dangerous by the City Engineer. From the terms of the notice it is, in my judgment, manifest that the City Engineer considered the condition of the building as a whole, came to the conclusion that certain parts of it had been rendered dangerous by the windstorm of the 11th September, 1958, and as a result served upon Defendant Company the notice in question. I,

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Judgment of Phillips J. 30th September 1959 continued

accordingly hold that there has been sufficient compliance with the terms of section 208 (2) of the Ordinance.

It was further submitted that the requirement by the City Engineer that the Defendant Company should "take down" certain parts of the building was not a requirement that the building should be demolished within the meaning of section 14 (1) (l) of the Rent Restriction Ordinance.

I am unable to accept this submission, as it seems to me that the intention of the Legislature in creating this relaxation of the restrictions on a landlord's right to obtain possession of demised premises, as created by this provision of the Ordinance, would be rendered nugatory unless such relaxation is held to apply to cases where only a portion of such premises is required by law to be demolished.

In cases of this nature before making an order for possession the Court must be satisfied not only that the condition stipulated by section 14 (1) (l) is fulfilled, but in addition that it is reasonable in the circumstances to make the order. There may conceivably be cases in which, where only part of demised premises is required by law to be demolished the Court may refuse to make an order for possession; for example, on the ground that the portion of the premises in question may be demolished without the necessity of the tenant giving up possession.

This, however, in my judgment, is clearly not such a case. The circumstances here are that the Defendant Company as they were legally entitled to do, and acting in obedience to the requirement of the City Engineer's notice, under pain in default of compliance of exposure to the consequences provided for by subsections (4) and (5) of section 208 of the Port of Spain Corporation Ordinance, have (inter alia) already removed the greater part of the main roof of the building, with the result that the remaining portion thereof, including the roof of the demised premises, has become peculiarly

liable to be affected by the force of a heavy wind. To use the words of Mr. A.D. Moore, an architect of considerable experience who gave evidence on behalf of the Defendant Company:-

> "It is not entirely safe. The enclosing wall at the end is not safe - owing to the fact that there is a vast area exposed to any future wind. A sudden squall could have the effect of blowing down the partition and lifting the roof. It would probably be blown away".

It is to be noted that the opinion of this witness is shared by Mr. A.D. Archibald, a civil engineer, who was called on the Plaintiff's behalf, and in relation to this matter expressed himself as follows:

> "Structurally the condition of the structure surrounding the area of the Plaintiff's office is sound; but there is a further bay - the one next going south - where the original roof has been maintained. There is a face open which makes it dangerous. If a strong wind occurred, that portion of the roof, including the Plaintiff's, might be lifted. This condition was caused by not completing the lowering of the roof. If they hadn't lowered the roof this wouldn't have come about."

On the question of whether it is reasonable to make an order for possession, a further relevant though perhaps minor consideration is the fact that the Plaintiff flatly refused to consider the possibility of obtaining the alternative accommodation about which he had been informed by the Defendant Company in their letter of the 9th December, 1959, on the ground that it was unsuitable for his business. In all circumstances of this case it seems to me that not only is it reasonable to make an order for possession, but that it would be most unreasonable to refuse an order.

It is now necessary to consider the effect of section 14 (3) of the Rent Restriction Ordinance, which provides as follows:

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No.16

Judgment of Phillips J. 30th September 1959 continued

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

The object of this very important section is to nullify, in cases where it is applicable, all the restrictions imposed by the Ordinance on a landlord's right of obtaining possession of demised premises. The legal position, in my judgment, therefore, is that whether or not the Defendant Company has satisfactorily established the condition laid down by section 14 (1) (1) of the Ordinance, viz., that the demised premises are required by law to be demolished, this Court is empowered to and obviously should make an order if it considers it expedient in the interest of public safety so to do.

A considerable mass of evidence was adduced by the parties to this action in relation to the effects on the building of the windstorm of the 11th September 1958, and I consider it sufficient to state that I accept the evidence given on behalf of the Defendant Company that the building (and particularly the roof and balcony) was rendered dangerous as a result of the windstorm, and I hold that it is necessary in the interest of public safety for the Defendant Company to carry out the demolition work required by the City Engineer's notice of the 4th October, 1958.

The question as to whether a particular structure is or is not dangerous may be, of course, largely a matter of opinion, but in so far as there is any conflict on matters of fact between the evidence given on behalf of the parties in relation to this matter, I accept substantially the evidence adduced on behalf of the Defendant Company and reject that adduced on behalf of the Plaintiff. With regard to the testimony of the expert witnesses which in each case appeared to be given fairly and impartially, it is to be observed that whereas the Defendant Company's architect spoke as to the condition in which he found the building shortly after the occurrence of the windstorm, the

evidence of the Plaintiff's expert witness, Mr. R.D. Archibald, on the other hand, was largely a matter of inferences based upon what he saw a considerable time after the windstorm, when the removal of the greater portion of the main roof of the building had already been completed.

It seems to me that, having regard to the dangerous situation that now exists in connection with the portion of the roof (including the roof of the demised premises) that remains standing, and bearing in mind the location of the building, situated as it is in a densely populated part of the business area of Port of Spain and adjoining the public highway, it is expedient in the interest of public safety that an order for possession should be made.

For the foregoing reasons I am of opinion that the Defendant Company is entitled to judgment on both the claim and the counterclaim. The Plaintiff's claim is accordingly dismissed; and on the counterclaim I make an order in favour of the Defendant Company for possession of the demised premises, with a stay of execution thereof for two months. The Plaintiff will pay the costs of the action.

Clement E. Phillips

PUISNE JUDGE.

30th September, 1959.

In the Supreme Court

No.17

Order on Judgment 30th September 1959

No.17

ORDER ON JUDGMENT

TRINIDAD:

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO

No.107 of 1959.

BETWEEN

ALBERT JAMES MAURITZEN
trading as
A. J. MAURITZEN & CO.

Plaintiff

and

GORDON GRANT & COMPANY LIMITED

Defendant

Entered the 30th day of September, 1959.

On the 30th day of September, 1959.

Before the Honourable Mr. Justice Clement Phillips.

This action having on the 2nd, 3rd, 4th, 5th, 6th, 9th, 10th, 11th and 12th days of March, 1959, been tried before the Honourable Mr. Justice Clement Phillips in the presence of Counsel for the Plaintiff and the Defendant and the said Judge upon reading the pleadings filed herein and the exhibits put in evidence at the said trial and marked A.1 - A.16 inclusive, B.1 - B.3 inclusive, C., D., E.1 - E.4, F.1. - F.4. inclusive, G.1., G.2., H.1. - H.5. inclusive, I., J.1., J.2., K.1. - K.3. inclusive, L., M. and N. respectively, and upon hearing the evidence of Albert James Mauritzen, Christopher Seebaran, Arthur Dudley Moore, George Charles Howden, Sage De Silva, Daniel Bleasdell, Francis Hugh Wilson and Rupert

Douglas Archibald taken upon their oral examination at the said trial and what was alleged by Counsel for the Plaintiff and the Defendant, and having on the said 12th day of March, 1959, ordered that this action should stand for judgment and the said action standing for judgment this day in the paper and the said Judge having ordered that Judgment be entered for the Defendant Company on the claim for its costs of defence and on the counterclaim for the recovery of the possession of the demised premises and its costs of the said counterclaim and having directed that execution be stayed on the judgment for the costs for six weeks and on the judgment for possession for two months and if within the said period of six weeks the Plaintiff give notice of appeal and enter the same, execution be further stayed until the determination of such appeal

THEREFORE IT IS THIS DAY ADJUDGED

That the Plaintiff recover nothing against the Defendant Company and that the Defendant Company recover possession of the premises in the statement of claim and defence herein mentioned and described as a portion of the first floor of the premises known as No.4 St. Vincent Street, in the City of Port of Spain in the Island of Trinidad comprising a room approximately 19 feet by 50 feet at the northernmost end of the first floor thereof and including the portion of the balcony over St. Vincent Street footway immediately opposite the said room which the Plaintiff held and occupied of the Defendant Company as a tenant, and its costs of defence and counterclaim to be taxed.

AND IT IS FURTHER ORDERED

That execution be stayed on the judgment for the aforesaid costs for six weeks and on the judgment for possession for two months from the date hereof and if within the said period of six weeks the Plaintiff give notice of appeal and enter the same, execution on the judgment for the costs as well as on the judgment for possession of the demised premises be further stayed until the determination of such appeal.

P.S. Ruiz
Deputy-Registrar.

In the Federal Supreme Court

No.18

Notice of Appeal

10th November 1959

No.18

NOTICE OF APPEAL

TRINIDAD.

IN THE FEDERAL SUPREME COURT

APPELLATE JURISDICTION

NOTICE OF APPEAL

Civil Appeal
No.19 of 1959.

BETWEEN

ALBERT JAMES MAURITZEN
trading as A.J.MAURITZEN & CO.
Plaintiff Appellant

and

GORDON GRANT AND COMPANY LIMITED
Defendant Respondent

TAKE NOTICE that the Plaintiff Appellant being dissatisfied with the whole decision more particularly stated in paragraph 2 hereof of the Supreme Court of Trinidad and Tobago contained in the judgment of The Honourable Mr. Justice Clement Phillips dated the 30th day of September, 1959 doth hereby appeal to the Federal Supreme Court upon the grounds set out in Paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellant further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

2. That Judgment entered for the Respondent with costs to be taxed; and that Judgment be also entered for the Respondent on its Counterclaim with costs to be taxed.

3. Grounds of Appeal.

(1) The learned Judge erred in holding:

(a) That the City Engineer's Notice of the 4th October, 1958 related and/or referred to the demised premises or, if so, satisfied the requirements of section 208 of the Port of Spain Corporation Ordinance.

(b) that the said Notice was subsisting at the material time.

(c) that the said Notice to "take down" certain parts of the building at No.2 St.Vincent Street was a requirement that the walls and appurtenances of the upper part of the entire premises should be demolished.

(d) that the mere service of the said Notice on the Respondent constituted a requirement by law for demolition of the said demised premises within the meaning of Section 14 of the Rent Restriction Ordinance.

(2) The learned judge erred in holding:

(a) That the Respondent was entitled to enter and/or carry out any demolition of or upon the demised premises in alleged compliance with the requirement of the said City Engineer's Notice or at all.

(b) that the Respondent's unauthorised removal of the balustrade and windows forming part of the demised premises was lawful.

(c) that the Respondent's removal of the roof and of the upper section of the staircase leading to Appellant's premises and its replacement by an uncovered stairway was lawful.

In the Federal Supreme Court

No.18

Notice of Appeal 10th November 1959 continued

(3) That the learned judge failed to have due regard or give effect to

(a) The evidence of the Engineer, Rupert Douglas Archibald, called by the Appellant.

(b) the fact that if the demised premises were at any material time in a dangerous condition the same was caused by the acts of the Respondent itself.

(4) The learned judge was wrong in law in holding that none of the acts of the Respondent (including the removal and destruction of the Appellant's business sign board) constituted a trespass or nuisance or breach of the covenant for quiet enjoyment.

(5) The order for possession was wrongly made.

(6) That the decision of the learned trial judge is unreasonable and/or against the weight of evidence and/or cannot be supported having regard to the evidence and accordingly should be reversed.

4. (1) That the Judgment of the learned trial Judge be set aside and that Judgment be entered for the Appellant with costs here and in the Court below.

(2) Such further or other relief as to the Court may seem just.

5. Persons directly affected by the appeal.

Name	Address
(1) Gordon Grant & Company Limited	6 St.Vincent Street, Port of Spain, Trinidad.
(2) Albert James Mauritzen trading as A.J. Mauritzen & Co.	4 St.Vincent Street, Port of Spain. Trinidad.

Dated this 10th day of November, 1959.

M. Hamel-Smith & Co.
Solicitors for the Appellant.

No.19

JUDGMENT OF CHIEF JUSTICE HALLINAN MR. JUSTICE LEWIS and MR. JUSTICE MARNAN.

In the Federal Supreme Court

No.19

Judgment of Chief Justice Hallinan, Mr. Justice Lewis and Mr.Justice Marnan 2nd November 1960

IN THE FEDERAL SUPREME COURT

APPELLATE JURISDICTION

CIVIL

Territory: TRINIDAD & TOBAGO.

ON APPEAL FROM THE SUPREME COURT OF

TRINIDAD & TOBAGO

CIVIL APPEAL NO.19 OF 1959.

BETWEEN

ALBERT JAMES MAURITZEN — Plaintiff-Appellant.

AND

GORDON GRANT & COMPANY LIMITED — Defendant-Respondent

BEFORE :

The Honourable The Chief Justice
" " Mr. Justice Lewis
" " Mr. Justice Marnan

11th, 12th, 13th, 14th, October, 1960.

Mr.Algernon Wharton Q.C., and Mr.Raymond Hamel-Smith for the Plaintiff-Appellant.
Mr.Malcolm Butt Q.C., with Mr.E.H.Wells for the Defendant-Respondent.

J U D G M E N T

Mr. Justice Lewis:

On the 11th September, 1958, a wind-storm

In the Federal Supreme Court

No.19

Judgment of Chief Justice Hallinan, Mr. Justice Lewis and Mr.Justice Marnan
2nd November 1960
continued

occurred in the city of Port-of-Spain and caused damage to a number of buildings, amongst them a building belonging to the Respondents, situated at the corner of St. Vincent Street and South Quay and assessed as Nos.2 and 4 St. Vincent Street. This building was constructed of stone with a galvanized iron roof, consisted of a ground floor and an upper storey, and had an enclosed wooden balcony over the footway, with a lean-to roof, along the whole length of its western and southern sides. The ground floor was occupied by the Respondents for their own purposes which included the hulling of coffee. The upper floor was rented as offices to various persons and the Appellant occupied as a monthly tenant the most northerly office consisting of a room and the portion of the balcony immediately in front of it. The premises were rent controlled. The most obvious damage to the building resulting from the storm was that the roof of the balcony was completely blown away, a number of windows in the balustrade were broken, the parapet was cracked, and the roof over the main building was affected.

The Respondents, after inspection of the storm damage by an architect, decided that it was uneconomic for them to repair the building and on the 30th September, 1958, served a notice upon the Appellant requiring him to give up possession of the premises on the 31st October, 1958. Similar notices were served on the other tenants. The building was also inspected by officials of the City Engineer's Department and on the 4th October, the City Engineer, having formed the opinion that certain parts of it had been rendered dangerous by the wind-storm, served a notice upon the Respondents under S.208(2) of the Port-of-Spain Corporation Ordinance, Cap.39 No.1, requiring them "to take down the roof, the parapet wall along the western and southern sides of the building and the balcony over the footways of South Quay and St. Vincent Street within thirty (30) days of the date of this notice." The Respondents forwarded a copy of this notice to the Appellant on the 7th October, 1958. The Appellant promised to leave as soon as he could obtain suitable alternative accommodation, and after 31st October became a statutory tenant of the Respondents. On the 9th December the

Respondents by letter informed the Appellant that they had been advised that certain parts of the building were in imminent danger of falling and that they proposed to take immediate steps to remove the worst of these dangers. Accordingly, on the 13th December, they commenced certain demolition work in the course of which they inter alia removed portions of the roof and parapet wall and the balcony to the south of the Plaintiff's office and the whole of the balustrade including the windows which formed part of the balustrade. That portion of the roof was then replaced at a level 3 feet above the first floor level, the main walls having been cut for this purpose. The stairway by which the Appellant had previously gained access to his office was altered, and it was left uncovered.

The effect of the lowering of a portion of the roof was to leave an exposed face to the south of the Plaintiff's premises and this, it was agreed, rendered the remainder of the roof vulnerable to high wind and therefore dangerous. It also provided an opening through which dust and dirt from the demolition work penetrated freely into the Appellant's office; galvanized iron sheets were put up to reduce this nuisance but were removed when the noise and dust had substantially reduced. The effect of the lowering of the main eastern wall was that husks from the Respondents' coffee hulling operations entered freely into the Appellant's office. The Appellant had always suffered to some extent from this but complained that the inconvenience was now greatly aggravated.

On 4th February, 1959, the Appellant brought the present action claiming an injunction and damages in respect of

(a) nuisance from dust and dirt (including coffee husks) and noise resulting from the demolition work;

(b) breach of an implied covenant for quiet enjoyment and/or trespass resulting from the alteration to the staircase and the removal of the balustrade and windows.

In the Federal Supreme Court

No.19

Judgment of Chief Justice Hallinan, Mr. Justice Lewis and Mr.Justice Marnan
2nd November 1960
continued

By their Defence the Respondents admitted the acts of demolition and alleged that they were justified by the dangerous condition of the building and that the work was carried out pursuant to the City Engineer's demolition notice. They contended that the Appellant had no cause of action in respect of the alterations to the stairway or for trespass or nuisance. They counterclaimed for possession; basing their claim upon the notice to quit, the dangerous condition of the premises, and the City Engineer's notice. The trial judge dismissed the Appellant's claim and gave judgment for the Respondents on their counterclaim. Against this order the Appellant has appealed.

In this Court the appeal was argued upon five main grounds viz:-

(1) that the City Engineer's notice of the 4th October, 1958, did not relate to the demised premises;

(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.

(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 Respondents in lowering the roof of the building.

The first two grounds may be easily disposed of. The City Engineer's notice was addressed to "The owner, 2 St. Vincent Street" and referred to "the condition of the building on premises assessed as No.2 St.Vincent Street". In fact, the building is assessed as Nos.2 and 4 St. Vincent Street and is one building erected upon two lots of land. The correspondence which passed between the parties clearly shows that they understood the notice to refer to the whole building and not merely to such portion of it as actually rests on lot No.2 and I agree with the trial judge that this "slight misdescription" cannot be held to vitiate the notice.

The submission that the City Engineer had abandoned the requirements of his notice before the demolition commenced, is based upon the evidence of Major Howden, that the Respondents informed the City Engineer by letter that they had given their tenants notice to quit and proposed to proceed with the demolition work as outlined in the notice as soon as the tenants left the building, and that the City Engineer on subsequently being notified that legal steps were being taken to eject the Appellant accepted the position and took no further steps. I do not agree with counsel's submission. In view of the fact that the Respondents at all times signified to the City Engineer their intention to comply with the requirements of the notice, it is not a fair inference from the fact that he allowed them time to obtain possession from their tenants that he had abandoned the notice.

As to the third ground of appeal, the learned trial judge found that the balustrade was in a dangerous condition having regard to the fact that the supports which had joined it to the roof of the balcony were out of plumb and leaning outwards as a result of the roof

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having been blown away in the storm. On this question he had before him the evidence of the Respondents' architect, Mr. Moore, and their contractor, Mr. Bleasdell, on the one hand, and that of the Appellant and his engineer, Archibald, on the other hand. He accepted the evidence on behalf of the Respondents in reference to that on behalf of the Appellant, and found as a fact that the condition of the balustrade and windows constituted a danger to the public. I see no reason for disturbing this finding of fact.

Counsel for the Appellant submitted that even if the condition of the balustrade constituted a public nuisance the Appellant was nevertheless not entitled to enter the demised premises and remove it. He said that in the absence of an express or implied right of entry under the contract of tenancy, such an entry by a landlord was a trespass and a breach of the implied covenant for quiet enjoyment. In this case, he submitted, the Respondents had no right express or implied to enter the premises; and further, even if the Respondents were entitled to enter, they could do so only in order to repair and not to demolish the balustrade. He referred to Halsbury's Laws of England, 3rd Ed. Vol. 23 p.564, para. 1237 and Trotter et Anor v. Louth et Anor (1931) 47 T.L.R. 335. For the Respondents it was submitted that the condition of the balustrade constituted a public nuisance for which they, as owners, would be held liable in the event of damage, and that they were entitled to enter the premises for the purpose of abating it; and that in the circumstances of the present case their removal of the balustrade and erection of temporary wooden bars in its place was justified and lawful. They relied upon Mint v. Good (1950) 2 All E.R. 1159.

It is well established that in the absence of a stipulation reserving to a landlord the right to enter, or in the absence of a right given by statute, the landlord cannot enter the premises without the permission of the tenant, even to do repairs. It is equally well established that where the landlord is bound to repair the house he is liable to an action for

injury sustained by a stranger on the adjoining highway due to the want of repair. (See Payne v. Rogers (1794) 2 H.Bl.350). In Wilcheck v. Marks (1934) 2 K.B.56, it was decided that where there was no agreement between landlords and tenants as to repairs, but the landlords knew that there was adjoining the street a defective shutter on premises over which they had reserved the right to enter and do repairs if they thought fit, they were liable to a passer-by who was injured by the defective shutter. Goddard, J., as he then was, placed the liability of the Landlords on the ground that they had expressly "reserved to themselves the right of doing repairs to the premises and to that extent, at any rate, exercised a measure of control over them for this purpose" (p.63). In Heap v. Ind Coope & Allsopp Ltd. (1940) 2 K.B.476, it was held that in order that a person injured while proceeding along a highway by the defective condition of premises alongside it may be entitled to sue the landlord instead of the occupying tenant for personal injuries, it is not necessary that the landlord should have covenanted with the tenant to do the external repairs; it is sufficient that he has reserved the right to enter on and view the premises and to do all necessary repairs. MacKinnon, L.J., held on the principle laid down by Goddard, J., that the proximity being established the landlord had the right to enter and remedy a known danger. The principle was further extended in Mint v. Good. There, the Plaintiff was injured when a wall, adjoining the highway on which he was walking, collapsed. The wall was on premises which the Defendant landlord had let on weekly tenancies under oral agreements to different occupiers who were not sued in the action. The defective condition of the wall, which was due to lack of repair, could have been ascertained by inspection. No express provision was made in the agreements with regard to the liability for repairs and the landlord reserved no right of entry to effect repairs, but he had from time to time carried out repairs. The Court of Appeal, reversing the decision of the trial judge, held that in the absence of evidence or of express stipulation to the contrary

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there was to be implied in an agreement for a weekly tenancy which was silent on the matter, a term that the premises let would be kept in a reasonable and habitable condition by the landlord and that he would have the right to enter and effect necessary repairs; and, therefore, he was liable to the plaintiff in damages. Somervell, L.J. thought that this term should be implied on the ground of business efficacy. After saying that in his view the landlord would be liable to be sued if he had reserved to himself the right to enter and view the premises and do repairs "whether he has done so expressly or implicitly," he referred to the statement of Lord Porter with regard to weekly tenancies in McCarrick v. Liverpool Corporation (1946) 2 All E.R. 646 at p.647:-

> "My Lords, in construing this statute its exact terms must be considered. It does not impose extraneously a duty on the landlord. It merely inserts a term into the tenancy agreement, and this term then becomes part of the contract between the parties, whether they wish it or not. In such a tenancy there is no reason why any term should not be implied provided it is necessary to secure the business efficacy of the contract and it is not contrary to the provisions of the Act."

Counsel for the Appellant submitted that Mint v. Good was inapplicable to the present case, since that case dealt solely with weekly tenancies. Somervell, L.J. expressly excluded "tenancies longer than weekly tenancies or where there are written documents expressly dealing with repair and re-entry (p.1163); though Denning L.J., at p.1166, ventured "to doubt in these days whether a landlord can exempt himself from liability to passers-by by taking a covenant from a tenant to repair the structure adjoining the highway". We were informed by counsel for the Respondents that the Courts of this Territory treat monthly tenancies on a similar footing to weekly tenancies in England, but the Appellant's Counsel did not accept this. In the absence of any precedent I am not prepared to decide the question on this basis, though I would not be greatly surprised

to find that in the case of parol monthly tenancies in this Territory landlords in practice assume the responsibility for structural repairs. I think, however, that on the facts of this case a right of entry to repair on the part of the Respondents can reasonably be implied.

The Appellant stated in evidence that he was not responsible for repairs and that the Respondents had previously done some repairs and painting. Further, in his letter of the 2nd October, 1958, he called upon the Respondents to repair the leaking roof and gutter spout, stating that in default he would himself repair them for the account of the Respondents. The Respondents in their turn seem to have considered themselves responsible for the repairs, for their letter of the 30th September informed the Respondents that they had been advised that repairing the damage done by the recent storm would be quite uneconomical and that consequently they did not propose to repair the building; and in their reply to the Plaintiff's letter of October 2nd they forbade him to do the repairs for which he was asking. Both parties therefore assumed that the responsibility for repairs lay with the landlord. This is not surprising when it is remembered that there was a common entrance and stairway leading from the ground floor to the upper storey, and that this upper storey was rented by rooms to a number of monthly tenants. Clearly, portions of the building were under the control of the landlords, who would be expected to reserve the right of entry to inspect the remaining portions and to do the necessary repairs. No one tenant could be expected to undertake responsibility for the roof or the balcony or the balustrade which were common to the whole building. I have therefore no difficulty in holding that a term should be implied in this tenancy that the landlords were to be responsible for keeping the premises in a habitable condition and that they had a right of entry for the purpose of effecting repairs. That being so, it is clear that the landlords would have been liable to passers-by for any injury which might result from the dangerous condition of the balustrade and were under a duty to abate it.

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In my opinion the case of Trotter et Anor. v. Louth et Anor. (1931) 47 T.L.R.335, is clearly distinguishable from the present case. In that case, the Defendants purporting to act under a dangerous structure notice, served on them by the London County Council, entered on premises demised to the first plaintiff to carry out the work necessitated by the notice without having first served notice of intention to enter under s.192 of the London Building Act, 1894. In an action in which the plaintiffs claimed damages for breach of the covenant of quiet enjoyment and trespass, the defendants pleaded that they had to comply with the dangerous structure notice and that the entry and acts of which the plaintiffs complained were occasioned in complying with the notice. The first plaintiff occupied under a written lease of the premises which contained no express stipulation by the lessor to repair but the lessee had to do the internal repairs. The second plaintiff was a sub-lessee of the first. It was held that the defendants had no right of entry without complying with s.192 and that both plaintiffs were entitled to damages. This case, in my view, is distinguishable on the ground that there was a written lease and that as the defendants did not reserve to themselves the right to enter and do necessary repairs, they had no authority for so doing and could not rely upon the dangerous structure notice. In the present case, as I have already stated, I consider that a term ought to be implied reserving such a right to the respondents.

Counsel for the Appellant, however, contended that all that the Respondents could do was to repair the balustrade and not remove it. I do not think that this is so. The dangerous condition of the balustrade was due to the fact that the roof of the balcony had been blown away. It could not be repaired without replacing the roof. But in the circumstances of the case it would be unreasonable to expect the landlords to replace the roof. They were in process of complying with the City Engineer's notice to demolish. The other tenants had already left the building, and the Appellant had promised to vacate as soon as they could find suitable alternative accommodation. What the Respondents did was to remove the

defective balustrade and to replace it by temporary wooden bars. I am of opinion that they were entitled to do this, and that this ground of appeal fails.

I pass now to consideration of the fourth ground of appeal which concerns the alleged nuisance from the entry of coffee husks into the Appellant's office. The substance of the Appellant's evidence about this was as follows :- The Respondents have for some years operated on their premises on the ground floor of the building a coffee hulling machine the waste husks from which were expelled through a flue behind the eastern wall of the building. This machine was operated off and on. A certain quantity of husks had always found their way into the Appellant's office but had not caused any serious inconvenience. When, however, the portion of the eastern wall to the south of Respondents' office was removed, the quantity of husks blown into the Plaintiff's office increased to such an extent as to cause serious annoyance. The Appellant complained generally of the dust and dirt resulting from the demolition work but not specifically of the coffee husks, and at the end of December the Respondents erected galvanized iron sheets to the south of his office which considerably reduced the entry of dust, dirt and husks. These were removed on or about January 29th, 1959, and the husks and dust once more flowed freely into his office, though by this time the quantity of dust was much less than previously. The Appellant said that everything in his office was affected by the husks - his papers and typewriters; a desk dusted at 8.00 a.m. was covered with husks by 9.30 a.m. This situation continued up to the time of the trial.

It was not seriously disputed that the degree of inconvenience and annoyance suffered by the Appellant was sufficient to amount to a nuisance. Counsel for the Respondents contended that the nuisance was of a temporary nature, a result of the demolition work, and that in any event the Appellant being under notice to quit, the Respondents were justified in thinking that he would not long be affected

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by it. The trial judge, he said, directed himself correctly on the law of nuisance, applied that law to all the facts before him - dirt, dust and coffee husks - and came to the conclusion that it was not an actionable nuisance. The trial judge seems to have made no clear finding about the coffee husks, which he appears to have lumped with the dirt and dust resulting from the demolition work. In my view the coffee husks cannot properly be treated on the same basis as the dust from the demolition work, for while the latter was clearly temporary and such as a neighbour in a busy section of the city must expect to put up with occasionally, the coffee husks came from the Respondents' business operations on their premises, from a machine installed by them as part of their normal business activities, and the aggravation in the inconvenience was due to their act in removing the wall which had previously served as a screen. With regard to the appellant's being under notice to quit, I do not think that this is at all relevant to the question of liability, though it may affect the question of damages. It was also suggested that the Appellant cannot complain of the nuisance for it was his act in suing for an injunction which caused the stopping of the demolition work. There is, however, no evidence that the Respondents intended to abate the nuisance - in fact, when the writ was issued on 4th February, they had just removed the galvanized iron sheets which had served to reduce it - and, in any event, I do not think that this is a relevant consideration on the question of liability. I should add that this Court was informed by Appellant's counsel that since the conclusion of the trial the Respondents have abated this nuisance.

In Metropolitan Properties Ltd. v. Jones (1939) 2 All E.R. 202 Plaintiffs as the landlords of certain premises had installed in the flat above that occupied by the defendant a central heating system, the circulation of the water in which was maintained by a small electric motor. The defendant complained of the noise caused thereby and certain alterations to the apparatus were thereupon made. In an action against the defendant for rent, the defendant

counterclaimed for damages for nuisance, the nuisance being the noise due to the running of this motor. It was found as a fact that there was no appreciable disturbance of the defendant's comfort after the alterations to the apparatus had been made. The plaintiff argued that the nuisance was of a merely temporary character. It was held that an actionable nuisance had been proved. Goddard, L.J., as he then was said (at p.205):-

> "He" (the Plaintiff) "relies on the class of case which shows that, where one adjoining owner is doing necessary repairs to his building in the ordinary course of affairs - the sort of thing any owner has to do, such as emptying a cess-pit in the ordinary course of sanitary requirements, or using a drill, or doing something of that nature, such as we all know owners have to put up with - that gives no cause of action. It is a mere temporary operation which is being carried on. If my neighbour is going to put up some bookcases in his house, or put in a new fireplace, for a day or two I shall be exposed, no doubt, to a considerable disturbance and knocking, which may be an intolerable thing, but the law does not regard that as a nuisance. A man may be doing that which is necessary for his house or his own comfort, just as I may do the same thing in my house the following month. It is one of those things which one has to put up with. I do not think that those cases apply to such a case as this, where the motor is so installed on the premises, and runs in such a way, as to cause a nuisance. I think that, as soon as that is done, the plaintiffs gets a cause of action, and the fact that it can be stopped by reconstruction means only that the person on whose land the nuisance is need never have had it there. I think that the cause of action is none the less complete".

I consider that in this case the Appellant has proved an actionable nuisance and ought to succeed on this part of his appeal. I would assess

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the damages at $100.00.

Finally, the Appellant contended that the learned judge was wrong in allowing the Respondents' counterclaim for possession of the demised premises. In doing so, the judge purported to act under s.14 (1) (L) of the Rent Restriction Ordinance - that the building "is required by law to be demolished" - as well as under s.14 (3) of the same Ordinance - that the ejectment is expedient in the interest of public safety. With respect to s.14 (1) (L), counsel submitted that mere service by the City Engineer of a notice to demolish under s.208 (2) of the Port-of-Spain Corporation Ordinance is not sufficient to bring the case within the meaning of the phrase "required by law". "Required", he said meant "compelled", and until an Order was made by a magistrate under subsection (4) of that section enforcing the requirements of the City Engineer's notice the owner of the building was not "compelled", by law to obey it. Further, until such an order was made it was competent to challenge the validity of the notice by proving that the building was not, in fact, in a dangerous condition.

It is convenient at this stage to set out the relevant statutory provisions.

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

> "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".

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.

Section 14 (1) (1) of the Rent Restriction Ordinance is as follows:-

> "No order or judgment for the recovery of possession of any premises to which this Ordinance applies, or for the ejectment of a tenant therefrom, shall, whether in respect of a notice given or proceedings commenced before or after the commencement of this Ordinance, be made or given unless -
>
> ... ...
>
> (1) the dwellinghouse, or the public or commercial building, or the building erected by the tenant on building land, as the case may be, is required by law to be demolished;"

With respect to the effect of the City Engineer's notice, the learned judge held that he was bound by the judgment of the Full Court of Trinidad and Tobago dated 21st October, 1958, in the appeal of Lalchan Pooran v. Kuar Singh & Ors., No.164 of 1958, to decide in favour of the Respondents. In that case, the Town Engineer of San Fernando, acting under the provisions of s.201 of the San Fernando Corporation Ordinance Ch.39 No.7 which is similar in its terms to s.208 of the Port-of-Spain Corporation Ordinance, served a notice on the appellant stating that the premises were in a dangerous structural condition and requiring the building to be demolished. In ejectment proceedings brought by the appellant against his tenant alleging that the building was "required by law to be demolished," the tenant challenged the effectiveness of the notice on the ground that the premises were not "in a dangerous structural condition". The

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Magistrate refused to make an order. On appeal, the Full Court held that while in proceedings by the Corporation against the landlord under sub-section (4) it was open to the Magistrate to try the issue of the dangerous condition of the building, this issue could not be raised by the tenant in ejectment proceedings founded upon the notice. They said :-

> "In this case the issue is not between the Council and the landlord. The landlord concedes that the premises are dangerous and is prepared to act on the notice of the Town Engineer. To that end he gave notice to quit to his tenants. The sole question that has to be decided is whether the premises could rightly be said to be required by law.
>
> 'Law' is defined in section 2 of the Interpretation Ordinance as including (inter alia) any legislative enactment. The San Fernando Corporation Ordinance is a legislative enactment.
>
> It is to be observed that if the notice is not complied with the Council proceeds by way of complaint. In our opinion, it is manifest that the complaint arises by reason of failure to comply with a requirement. Hence where the notice which is given pursuant to the provision of that Ordinance does in fact convey a requirement it follows that it must be a requirement by law.
>
> ....
>
> The proceeding before the magistrate is, however, a matter between the Council and the landlord only and the tenants would not be entitled to impeach the notice given by the Town Engineer on the ground that the premises are not dangerous".

We were invited by counsel for the Appellant, in his submission referred to above, to hold that Pooran's case was wrongly decided. Counsel for the Respondents, on the other hand, urged that Pooran's case did not go far enough,

and that the Full Court was wrong in holding that the Magistrate could try the issue of the dangerous condition of the building in proceedings brought against an owner for non-compliance with the Town Engineer's notice.

The question for determination in the present case is whether the words "required by law" are wide enough to include a notice served by the City Engineer under s.208 of the Port-of-Spain Corporation Ordinance. I think that the word "law" in this context must be given its widest meaning, and that it includes a notice containing a requirement issued by a public authority in the exercise of a statutory power. Section 208 confers upon the City Engineer a wide administrative discretion to call upon an owner to do acts which may involve the owner in considerable expense and does not even make it necessary for the City Engineer to give the owner a hearing before issuing his notice. The purpose of s.208 (4) is, in my view, to enable the owner to be heard before the Corporation is entitled under sub-section (5) to execute the requirements itself and recover the costs from the owner, or to bring proceedings for non-compliance. In effect, s.208 (4) takes the place of the right of appeal from the notice which one would have expected to find provided for, and the words "it shall be lawful" give the magistrate, on the hearing of the complaint, a discretion whether or not to order the owner to carry out the requirements of the notice. I find nothing in the words of section 208 or in the general scope and objects of the Ordinance to lead to the conclusion that the Legislature intended to oblige the Magistrate to exercise the power to make an order merely upon proof of service of the notice when on the prima facie meaning of the words he would be entitled to refuse to do so: and I agree with the Full Court that the exercise of his discretion involves a consideration of the question whether there is a danger which requires removal. This is the more so in view of the fact that the power to apply for the order with its far-reaching consequences, is given to a public authority, for "it is far more easy to show that there is a right where private

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interests are concerned than where the alleged right is in the public only" (per Lord Blackburn in Julius v. Bishop of Oxford (1880) 5 A.C. 214, at p.244). In my opinion, the City Engineer's notice derives its mandatory authority from the Ordinance under which it is issued and retains its statutory force until set aside by the Magistrate in proceedings under s.208(4) or, possibly, by the Supreme Court in proceedings instituted by the owner against the Corporation for this purpose.

In Croydon Corporation v. Thomas (1947) 1 All E.R. 239, Lord Goddard, C.J., had to consider the effect of s.75(1) of the Public Health Act, 1936, which provides that a local authority who have undertaken the removal of house refuse in a district "may by notice require the owner or occupier of any building within the district" to provide dustbins according to such specifications as the authority may approve; and gives to any person aggrieved by such requirement a right to appeal to a court of summary jurisdiction. Subsection (2), in substance, provides that if a person fails to comply with the notice, the authority may provide the dustbin and recover the cost from the person in default, and the person who fails to comply becomes liable to a penalty. Lord Goddard said, at p.240:-

> "If you take the first part of sub-s. 1 alone, it appears to put the widest possible discretion into the hands of the local authority. It appears to enable them by administrative action to require either the owner or the occupier to provide the dustbin. Accordingly, if the section remained without the addition of the words to which I have referred about an appeal, it would seem reasonably clear that that was an administrative discretion given to an elected body, the local authority, with which no one could interfere - not a discretion which requires to be exercised judicially, but an administrative discretion. When, however, you find that any person aggrieved by a requirement of the local authority may appeal to a court of summary jurisdiction,

it is obvious that Parliament intends the discretion which has been exercised by the local authority to be subject to an appeal, and the final determination, if a person does appeal, is left to the justices and not to the local authority".

Counsel for the Appellant argued that the fact that the penalty in s.208(5) was attached to non-compliance with the Magistrate's order and not to non-compliance with the City Engineer's notice indicated that the notice was not of itself a requirement "by law" but merely gave to the Corporation an inchoate right to obtain an order. In my opinion, the ultimate power to enforce the requirements of the notice is there, though it can only be exercised after the notice has been confirmed by the Magistrate's order. The intervention of the order between the notice and its enforcement provides the opportunity for the owner to be heard, but this in no way deprives the notice of its full force and effect when the landlord accepts it as a valid notice and relies upon it.

In my opinion, Pooran's case was rightly decided. I agree that the Full Court in holding that a house which is the subject of the City Engineer's notice to demolish is "required by law to be demolished" and that the issue of the dangerous condition of the building can only be determined as between the Corporation and the owner upon whom the City Engineer's notice is served and is not relevant to proceedings in ejectment between landlord and tenant.

In the instant case the trial judge, while holding himself bound by the decision in Pooran's case, did try the issue as to the dangerous structural condition of the Respondents' building and came to the conclusion that the building (and particularly the roof and balcony) was rendered dangerous as a result of the wind storm, and that it was necessary in the interest of public safety for the Defendant Company to carry out the demolition work required by the City

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Engineer's notice. This is, in effect, a finding that the City Engineer's notice was justified.

In my opinion, therefore, the learned judge was right in making an order for possession and the Appellant fails on this ground. I do not consider it necessary to deal fully with the question whether in view of the condition of the building at the time of the trial, an order for possession should have been made under s.14 (3) of the Rent Restriction Ordinance, which permits an order to be made where in the opinion of the Court the ejectment is expedient in the interest of public health or safety. It is sufficient to state that having considered the arguments adduced by counsel for the appellant, I am clearly of the opinion that the order was justified on this ground also.

In the result, the Appellant succeeds on only one of the issues raised in this appeal and as this was a minor aspect of the complaints upon which this action was founded and presented to the Court, it ought not, in my opinion, to affect the costs of this appeal. The judgment of the trial judge should be varied by awarding the sum of $100.00 damages to the Appellant, but the Respondents should have the costs of this appeal.

Dated the 2nd day of November, 1960.

(Sgd) A.M.LEWIS
Federal Justice.

The Chief Justice:

I agree both with the reasoning and the conclusions in the judgment that has just been delivered.

(Sgd) ERIC HALLINAN
Chief Justice

Mr. Justice Marnan:

I also entirely agree.

(Sgd) J.F.MARNAN
Federal Justice.

No.20

AFFIDAVIT OF DAVID HAMEL SMITH IN SUPPORT OF PETITION FOR LEAVE TO APPEAL.

In the Federal Supreme Court

No.20

Affidavit of David Hamel-Smith in support of Petition for Leave to Appeal 21st November 1960

IN THE FEDERAL SUPREME COURT
ON APPEAL FROM THE FEDERAL SUPREME COURT
APPELLATE JURISDICTION.

TRINIDAD.

Civil Appeal of No.19 of 1959.

BETWEEN

ALBERT JAMES MAURITZEN
trading as A. J. MAURITZEN & CO.

Appellant-Petitioner

And

GORDON GRANT & COMPANY LTD.

Respondent.

I, DAVID MALCOLM HAMEL-SMITH of No.19, St. Vincent Street in the City of Port of Spain in the Island of Trinidad, Solicitor, make oath and say as follows :-

1. I am a Partner of the firm of Solicitors known as M.Hamel-Smith & Co. who are the Solicitors for the Petitioner herein.

2. The statements made in the Petition hereto annexed and marked with the letter "A" are true in substance and in fact.

3. The questions in dispute relate to the right to possession of premises demised by the Respondents to the Petitioner and to breaches of the Respondents' covenants, and by reason otherwise of their general or public importance ought to be submitted to Her Majesty in Council for decision.

SWORN to by the within-named DAVID MALCOLM HAMEL-SMITH at No. 19, St. Vincent Street, Port of Spain, this 21st day of November, 1960.

D.M.Hamel-Smith.

Before me,
A. C. Clarke
Commissioner of Affidavits.

Filed on behalf of the Petitioner herein.

I certify that this is a true copy of the Original Affidavit filed in the Registry of the Supreme Court of Judicature of Trinidad and Tobago.
Dated this 5th day of February, 1963.
GEORGE R. BENNY
Acting Deputy Registrar.

In the Federal Supreme Court

No.21

Petition of A.J.Mauritzen for leave to Appeal to Her Majesty in Council 21st November 1960

No.21

PETITION OF A.J.MAURITZEN FOR LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

"A" This is the Petition marked with the letter "A" referred to in the affidavit of David Malcolm Hamel-Smith sworn to the 21st day of November, 1960, before me,

A. C. Clarke
Commissioner of Affidavits.

IN THE FEDERAL SUPREME COURT
ON APPEAL FROM THE FEDERAL SUPREME COURT
APPELLATE JURISDICTION.

TRINIDAD.

Civil Appeal No.19 of 1959.

BETWEEN

ALBERT JAMES MAURITZEN
trading as A.J.MAURITZEN & CO. — Appellant-Petitioner

And

GORDON GRANT & COMPANY LTD. — Defendant Respondent.

The Humble Petition of Albert James Mauritzen showeth :

1. That your Petitioner carries on business at No.4 St. Vincent Street (being portion of a building and premises assessed as Nos.2 & 4 St. Vincent Street) in the City of Port of Spain in the Island of Trinidad of which he is in possession as a monthly tenant of the Respondent at a rental of $44.00 a month.

2. On the 11th day of September 1958 a windstorm caused certain damage to the Respondent's said building and on the 30th day of September 1958 the Respondent served a notice to quit on your Petitioner on the ground that it was not considered economical to repair the said damage.

3. On or about the 4th day of October 1958 the Respondent was served with a notice by the City Engineer under provisions of section 208 of the Port of Spain Corporation Ordinance Ch. 39 No.1 requiring it to "take down" certain portions of the said building.

4. On the 13th day of November 1958 the Respondent commenced ejectment proceedings in a Magistrate's Court against your Petitioner for possession of the demised premises.

5. On or about the 13th day of December 1958 the Respondent began to demolish the roof and other portions of the first floor (then occupied by the Respondent) adjoining the demised premises thereby creating much disturbance to your Petitioner by reason of noise, dirt and dust.

6. Thereafter, during the months of December 1958 and January 1959 Respondent inter alia removed the roof over the stairway affording access to the demised premises demolished the upper walls of the said building and lowered a considerable portion of the main roof thereof, thereby aggravating the disturbance to your petitioner in his enjoyment of the demised premises. Further, the causing or permitting of great quantities of coffee husks and such like offal from the Respondent's own premises to enter the demised premises constituted an additional nuisance and breach of covenant as aforesaid.

7. On or about the 11th day of January 1959 while the said ejectment proceedings were still pending the Respondent removed the gallery windows that formed part of and enclosed the demised premises on its western side.

8. Further on or about the 24th and 25th January 1959 the Respondent demolished the closed balustrade forming the lower portion of the said enclosure of the demised premises and completely destroyed the business sign-board of your Petitioner's firm and entirely exposed his said place of business to the elements.

9. Accordingly on the 4th day of February

In the Federal Supreme Court

No.21

Petition of A.J.Mauritzen for leave to Appeal to Her Majesty in Council 21st November 1960 continued

1959 your Petitioner caused a writ of summons to issue in the Supreme Court of Trinidad and Tobago claiming inter alia the following relief:-

(a) a declaration that he is a tenant of the Respondent and entitled to possession of the said (the demised) premises.

(b) a declaration that he is entitled to the use of the passageway and stairway leading to his (the said demised) premises.

(c) A declaration that he is entitled to the use of the gallery along the western side of the said building.

(d) An injunction restraining the Respondent their servants contractors or agents and workmen from trespassing upon or demolishing any part of the said demised premises or causing a nuisance or interfering with the peaceful and quiet enjoyment of the said demised premises by your Petitioner.

(e) A mandatory injunction requiring the Respondent to restore the said demised premises to its proper condition.

(f) Damages for trespass.

(g) Damages for nuisance.

(h) Damages for breach of covenant for quiet enjoyment.

10. The Respondent counterclaimed for the recovery of possession of the said demised premises.

11. This action came on for hearing on the 2nd, 3rd, 4th, 5th, 6th, 9th, 10th, 11th and 12th days of March, 1959, before the Honourable Mr. Justice Clement Phillips who on the 30th September 1959 gave judgment in favour of the Respondent on the claim with costs and for recovery of possession of the said premises on the counterclaim with costs.

12. Your Petitioner appealed against the whole

of this decision to the Federal Supreme Court on the following Grounds :-

(1) The learned Judge erred in holding:

(a) That the City Engineer's Notice of the 4th October, 1958, related and/or referred to the demised premises or, if so, satisfied the requirements of section 208 of the Port of Spain Corporation Ordinance.

(b) That the said Notice was subsisting at the material time.

(c) That the said Notice to "take down" certain parts of the building at No.2 St. Vincent Street was a requirement that the walls and appurtenances of the upper part of the entire premises should be demolished.

(d) That the mere service of the said Notice on the Respondent constituted a requirement by law for demolition of the said demised premises within the meaning of Section 14 of the Rent Restriction Ordinance.

(2) The learned Judge erred in holding:

(a) That the Respondent was entitled to enter and/or carry out any demolition of or upon the demised premises in alleged compliance with the requirement of the said City Engineer's Notice or at all.

(b) That the Respondent's unauthorised removal of the balustrade and windows forming part of the demised premises was lawful.

(c) That the Respondent's removal of the roof and of the upper section of the staircase leading to Appellant's premises and its replacements by an uncovered stairway was lawful.

(3) That the learned Judge failed to have due

In the Federal Supreme Court

No.21

Petition of A.J.Mauritzen for leave to Appeal to Her Majesty in Council 21st November 1960 continued

regard or give effect to:

(a) The evidence of the Engineer, Rupert Douglas Archibald, called by the Appellant.

(b) The fact that if the demised premises were at any material time in a dangerous condition the same was caused by the acts of the Respondent itself.

(4) The learned Judge was wrong in law in holding that none of the acts of the Respondent (including the removal and destruction of the Appellant's business sign-board) constituted a trespass or nuisance or breach of the covenant for quiet enjoyment.

(5) The order for possession was wrongly made.

(6) That the decision of the learned trial judge is unreasonable and/or against the weight of evidence and/or cannot be supported having regard to the evidence and accordingly should be reversed.

(7) (1) That the Judgment of the learned trial judge be set aside and that judgment be entered for the Appellant with costs here and in the Court below.

(2) Such further or other relief as to the Court may seem just.

13. The appeal came on for hearing before the Federal Supreme Court on the 11th, 12th, 13th and 14th October 1960 and on the 2nd day of November, 1960 the Appeal was dismissed with costs save that the order of Phillips J. was varied by an award of the sum of $100.00 damages to Your Petitioner for damages for nuisance.

14. Against the decision of the Federal Supreme Court Your Petitioner desires to appeal to Her Majesty in Council and therefore now applies to Your Lordship for leave to appeal to Her Majesty in Council.

15. Your Petitioner hereby submits that leave to appeal to Her Majesty in Council should be granted for the following among other

REASONS:

1. Because the learned trial Judge and (save in

respect of the claim in nuisance) the Judges of the Federal Supreme Court gave judgment against your Petitioner, and such decisions are wrong in law on the grounds set out in paragraph 12 hereof.

2. Because the decision directly involves a claim or question relating to property and the rights of your Petitioner to possession thereof.

3. Because the issues raised both under the Rent Restriction Ordinance and the Port of Spain Corporation Ordinance are matters of great general and public importance and fit to receive the consideration of Her Majesty's Privy Council.

YOUR PETITIONER therefore most Humbly Prays that Your Lordships will be pleased to grant him leave to appeal to Her Majesty in Council from the judgment or order of the Federal Supreme Court (Appellate Jurisdiction) dated the 2nd November 1960 (save on the claim in nuisance) and from the judgment of the trial judge dated the 30th day of September 1959 or for such further or other relief in the premises as to Your Lordships may seem fit.

And Your Petitioner in duty bound will ever pray.

A. J. Mauritzen
Petitioner.

This Petition for leave to appeal to Her Majesty in Council is filed by Messrs.M.Hamel-Smith & Co. of No.19 St. Vincent Street, Port of Spain, Trinidad, Solicitors for the Petitioner Albert James Mauritzen.

M. Hamel-Smith & Co.
Solicitors for the Petitioner
Albert James Mauritzen.

Note: It is intended to serve this Petition on Messrs.J.D.Sellier & Co. of No.13 St.Vincent Street, Port of Spain, Solicitors for the Respondent, Gordon Grant & Co.Ltd.

TAKE NOTICE that this Petition is set down for hearing at the Federal Supreme Court, Federal House, St.Vincent Street, Port of Spain, on the 5th day of December 1960 at the hour of 9.00 o'clock in the forenoon and that the Petitioner will appear by Counsel.

Dated this 21st day of November, 1960.

R. V. Mc. I. Clarke
Registrar F.S.C.

In the Federal Supreme Court

No.22

Judgment of the Hon. Sir Alfred Rennie, Mr. Justice Archer and Mr. Justice Wylie
18th January 1961

No.22

JUDGMENT OF THE HONOURABLE SIR ALFRED RENNIE, MR. JUSTICE ARCHER and MR. JUSTICE WYLIE.

IN THE FEDERAL SUPREME COURT

APPELLATE JURISDICTION

CIVIL

Territory: TRINIDAD AND TOBAGO

APPLICATION FOR LEAVE TO APPEAL TO HER MAJESTY'S PRIVY COUNCIL FROM THE FEDERAL SUPREME COURT CIVIL APPEAL NO.19 OF 1959

BETWEEN

ALBERT JAMES MAURITZEN — Plaintiff-Applicant

AND

GORDON GRANT AND COMPANY LIMITED — Defendant-Respondent

BEFORE:

The Honourable Sir Alfred Rennie, President
" " Mr. Justice Archer
" " Mr. Justice Wylie

6th December, 1960, and 18th January, 1961.

Mr. Algernon Wharton, Q.C. and Mr. Raymond Hamel-Smith, for the Plaintiff-Applicant.

Mr. E. Hamel Wells for the Defendant-Respondent.

J U D G M E N T

Mr. Justice Rennie:

This is an application by the Plaintiff-Applicant, Mauritzen, for leave to appeal to Her Majesty in Council from a decision of the Federal Supreme Court. The Defendant-Respondent opposes the application, which gives for its reasons because :

(a) the learned trial judge and (save in respect of the claim for nuisance) the Judges of the Federal Supreme Court, gave judgment against the Applicant, and such decisions are wrong in law on the grounds set out in paragraph 12 of his petition; (b) the decision directly involves a claim or question relating to property and the right of the Applicant to possession thereof; and (c) the issues raised both under the Rent Restriction Ordinance and the Port-of-Spain Corporation Ordinance are matters of great general and public importance and fit to receive the consideration of Her Majesty's Privy Council. The rest of the application is more or less a recast of the Applicant's statement of claim in the action. That is the material on which the application is grounded.

Appeals to Her Majesty in Council are regulated by section 45 of the Federal Supreme Court Regulations, 1958, which provides :-

"... an appeal shall lie -

(a) as of right, from any final judgment of the Federal Supreme Court, where the amount in dispute on the appeal amounts to or is of the value of $1,440 (£300) or upwards, or where the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of $1,440 (£300) or upwards; or

(b) at the discretion of the Federal Supreme Court, from any other judgment of the Federal Supreme Court, whether final or interlocutory, if, in the opinion of the Federal Supreme Court, the question involved in the appeal is one which by reason of its great general or public importance, or otherwise, ought to be submitted to Her Majesty in Council for decision".

As the application contains no evidence of the value of the claim, the Applicant contends that no monetary qualification attaches to a claim to

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18th January 1961
continued

property. I am unable to place such a construction on the regulation; its language and form leave no room for doubt that the correct view is that there is only an appeal as of right if the requirement as to value is satisfied. Support for the view I hold can be found in Mohideen Hadjiar v. Pitchery (1893) A.C. 193 and Vick Chemical Company v. De Cordova (1948) 5 J.L.R. 196.

As a second limb of his argument, the Applicant submits that leave should be granted on the ground that the construction of the relevant portions of the Rent Restriction Ordinance and the Port-of-Spain Corporation Ordinance raise a matter of great general or public importance. It is of great general or public importance, he submits, because it touches on the rights of landlords and tenants, and on the powers of the Port-of-Spain and San Fernando Corporations. I regard such an argument as being equivalent to saying that a construction of a public enactment which is not in accordance with the wishes of a party is a matter of great general or public importance. The possibility that there may be a large number of persons who may wish to have a different construction placed on the enactment would not make what, in my view, is a purely personal matter into one of great general or public importance. It would be of great general or public importance to have the law settled if it is, in fact, unsettled, but one does not prove an unsettled state of law by putting forward his claim and by stating that he does not like the decision on his claim. If that were so, the law would always be unsettled.

From the provisions of the regulation it seems clear that this Court must first determine whether the question involved in the appeal is one of great general or public importance and, having done so, then proceed to exercise its discretion in determining whether such a question ought to be submitted to Her Majesty in Council for decision. There are clearly two things the Applicant must do: he must satisfy the Court that the question involved in the appeal is one of great general or public importance and he must put forward material on which the Court can exercise its discretion. How is

he seeking to prove that the question involved in the appeal is one of great general or public importance? He endeavours to do so by arguing that the decision is concerned with the construction of an Ordinance which affects the rights of a large number of persons. He puts forward no evidence to show that even a single person, other than himself, has an interest in the appeal going forward. There is nothing I can find in the application to make me come to the conclusion that the question involved in the appeal is one of great general or public importance. As mentioned by Myers, C.J., in Associated Motorists Petrol Co. Ltd. v. Bannerman (No.2) (1943) N.Z.L.R. 664 at 666, "the mere fact that an important question of law may be involved is not sufficient to bring the case within paragraph (b) of r.2. There must be something more than that: it must be shown to the satisfaction of the Court that the question involved in the appeal is one, which by reason of its great general or public importance, ought to be carried further". The applicant in this case has done no more than to say an important question of law is involved in the appeal. This, in my view, is not enough.

For the above reasons, I would dismiss the application with costs.

Dated the 18th day of January, 1961.

(Sgd.) A.B. RENNIE
Federal Justice.

Mr. Justice Wylie:

This petition for leave to appeal to the Privy Council from a decision of the Federal Supreme Court is brought under both subparagraph (a) and subparagraph (b) of Regulation 45 of the Federal Supreme Court Regulations, 1958. Under subparagraph (a), the allegation in the petition is that "the decision directly involves a claim or question relating to property and the rights of your Petitioner to possession thereof". No

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continued

evidence of the value of that claim was produced and it was contended on behalf of the Petitioner that the qualification in subparagraph (a) that the matter in dispute must be of the value $1,440 or upwards does not apply where a claim or question relating to property is involved and that therefore an appeal to the Privy Council lies as of right. This Court held against the Petitioner on this ground without calling upon the Respondent and it is only necessary to state here that the language and form of subparagraph (a) does not leave any room for doubt that the correct view is that there is only an appeal as of right under that subparagraph if the requirement as to value is satisfied, whatever may be the subject-matter or question involved. In Mohideen Hadjiar v. Pitchery (1893) A.C. 193, and Vick Chemical Company v. De Cordova (1948) 5 J.L.R. 196, it is clear that in the first case, the Judicial Committee, and in the second case, the Court of Appeal of Jamaica have both proceeded upon the assumption that the requirement as to value applies to a claim or question relating to property. While the actual provision under which the application in the first case was made, was not before this Court, it is not likely, in view of the attempts over the years to have some uniformity in the provisions regulating the right of appeal to the Privy Council, that is materially different so far as this particular point is concerned.

This Court took time to consider the submission that leave to appeal should be granted under Regulation 45(b) on the ground that the issues arising under the Rent Restriction Ordinance and the Port-of-Spain Corporation Ordinance are matters of great general and public importance. The grounds of appeal on which the Petitioner appealed to the Federal Supreme Court raise several questions of law concerning the proper interpretation of section 14 (1) (1) of the Rent Restriction Ordinance, under which a landlord may obtain an order for possession of premises required by law to be demolished and section 208 of the Port-of-Spain Corporation Ordinance, which gives the Corporation's Engineer authority to require a building, or part thereof, to be taken down, repaired, or otherwise dealt with under certain conditions. For the Petitioner

it was submitted that the answers to these questions affect the rights inter se of all landlords and tenants, as well as the Port-of-Spain Corporation and the San Fernando Corporation whose engineer has the same powers under Section 201 of the San Fernando Corporation Ordinance. It was also submitted that the rights of all property owners may be affected, whether or not the property concerned has been leased or let.

For the Respondent, it was submitted that the question involved in this appeal fell within a very narrow compass because it arose out of circumstances that were rare and unlikely to recur, namely a building being damaged in a certain manner and to a particular degree by a windstorm that was of most unusual severity for Port-of-Spain. It was further submitted that there was no evidence that other cases arising out of the windstorm depended on the result of this case or that there was any considerable number of tenanted properties in respect of which notices might be issued under Section 208 (2) of the Port-of-Spain Corporation Ordinance. It was also submitted that, whatever the decision was in respect of these questions of law, the order for possession must stand because it was also made pursuant to Section 14 (3) of the Rent Restriction Ordinance and the decision in that respect was based entirely on findings of fact.

Counsel for Respondent referred the Court to the following passage from the judgment of Myers C.J. in Associated Motorists Petrol Co.Ltd. v. Bannerman (No.2) 1943 N.Z.L.R. 664, at p.666, when dealing with an application for leave to appeal under the corresponding provision in New Zealand law :-

> "There is nothing before the Court, in my opinion, to show that other claims are pending or that the law as laid down by this Court has not been the rule actually in practice in mercantile and other offices in the past - that is to say, since the passing of the Shops and Offices Amendment Act, 1936; and there is nothing to show that any considerable body of persons are interested in the subject-matter of this appeal, or the subject-matter raised thereby, or that there is any

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continued

general desire on the part of employers or others who may be interested to have this case carried further. The mere fact that an important question of law may be involved is not sufficient to bring the case within para. (b) of r.2. There must be something more than that: it must be shown to the satisfaction of the Court that the question involved in the appeal is one which, by reason of its great general or public importance, ought to be carried further, and in my opinion, that has not been shown."

The full report is not available, but the foregoing quotation appears in the Supplement for 1960 to Volume 2 of Words and Phrases Judicially Defined. In this passage, the learned Chief Justice is, in my view, enumerating some of the elements that might, in the particular case before him, have made the question in issue one of great general or public importance. He was not intending that the elements listed were cumulative or constituted an exhaustive list, applicable to all applications.

The judgment sought to be appealed from is based in part upon the view that the alterations made by the Respondent to the building after the windstorm were reasonable because (inter alia) the Respondents were in process of complying with the notice given under Section 208 (2) of the Port-of-Spain Corporation Ordinance. Consequently, the questions raised concerning this notice are directly in issue. I do not accept the contention put forward on behalf of the Respondent that the questions as to the effect of a notice under section 208, or even as to the effect of the specific notice given in this case, are questions that arise only because of the extraordinary windstorm which caused the damage. These questions arise irrespective of the cause of the state of the premises and therefore the answers do have a general effect on the powers of the two corporations under that provision, the rights of property owners when these corporations purport to exercise these powers and, if the properties

are leased or let, the respective rights of landlords and tenants under the Rent Restriction Ordinance. Nor is the matter confined to the condition of the building in respect of which this notice is issued. Notices may be issued under subsections (1), (2) or (3) of section 208 of the Port-of-Spain Corporation Ordinance and in each case, their enforcement is provided for by subsection (4). Moreover, before a notice can be issued under subsection (1) or subsection (2), a condition must be fulfilled that the engineer has deemed a certain state of affairs to exist. In the case of subsection (2) there are a number of such states that may be deemed to exist, none of which was specified in the notice, It seems to me, therefore, that it cannot be said that the questions involved in this aspect of the case are not of great general or public importance in the circumstances existing in Trinidad merely because in this particular case they arise in consequence of a most extraordinary windstorm.

Moreover, both in the court below and on appeal, one ground on which the order for possession was based, was that the notice in this case which required the Respondent to take down only certain parts of this building, was such as to cause the premises let to be a "public or commercial building" that "is required by law to be demolished", to quote the relevant language of Section 14 (1) (1) of the Rent Restriction Ordinance. This is a question, the answer to which by this Court affects a far wider field than Trinidad and Tobago. For the identical provision occurs in eight of the ten Territories comprising The West Indies Federation and also in British Guiana where this Court exercises appellate jurisdiction, and it is not uncommon in these days for legislation dealing with powers of local bodies, or with public health, or town planning, to have provisions providing for demolition of buildings.

In my judgment, therefore, the questions of law that arise concerning the interpretation

In the Federal Supreme Court

No.22

Judgment of the Hon. Sir Alfred Rennie, Mr. Justice Archer and Mr. Justice Wylie 18th January 1961 continued

of these two statutory provisions do devolve matters of great general and public importance, and there are substantial questions to be determined which ought to be submitted to Her Majesty in Council for decision.

Referring to the fact that the order for possession was also made under Section 14 (3) of the Rent Restriction Ordinance, even if the Respondent's contention is sound that this decision is based purely on findings of fact and therefore unlikely to be upset on appeal to the Privy Council (a contention upon which I express no opinion) that would mean only that an order for possession, based on the state of the premises at the time of the trial, should stand. Such an order does not dispose of all the claims of the Petitioner as set out in the original statement of claim.

For these reasons, I would grant leave to appeal under Regulation 45 (b) of the Federal Supreme Court Regulations, 1958 upon usual conditions.

(Sgd.) C. WYLIE
Federal Justice.

Mr. Justice Archer:

I am also of the opinion that the questions raised by the applicant should be submitted to Her Majesty in Council for decision.

(Sgd.) C.V.H. ARCHER
Federal Justice.

In the Federal Supreme Court

No.23

Order granting final leave to appeal to Her Majesty in Council 3rd May 1961

No.23

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE FEDERAL SUPREME COURT

ON APPEAL FROM THE FEDERAL SUPREME COURT.

(Appellate Jurisdiction)

Civil Appeal No.19 of 1959.

Territory: TRINIDAD & TOBAGO.

BETWEEN

ALBERT JAMES MAURITZEN
trading as A. J. MAURITZEN & CO. Appellant

- and -

GORDON GRANT & CO. LTD. Respondent.

Entered the 3rd day of May, 1961.

On the 3rd day of May, 1961.

Before The Honourable Sir Eric Hallinan, Chief Justice
" " Mr. Justice Lewis, and
" " Mr. Justice Marnan.

UPON MOTION made unto the Court this day by Counsel for the above named Appellant for an order granting the said Appellant final leave to appeal to Her Majesty in Her Privy Council against the judgment of the Federal Supreme Court dated the 2nd day of November, 1960, and the judgment of Mr. Justice Clement Phillips dated the 30th day of September, 1959, upon reading

In the Federal Supreme Court

No.23

Order granting final leave to appeal to Her Majesty in Council
3rd May 1961
continued

the Notice of Motion dated the 17th day of April, 1961, the Affidavit of Anthony Hamel-Smith sworn to on the 17th day of April, 1961, and the Certificate of the Registrar of the Court dated the 15th day of April, 1961, all filed herein, and upon hearing Counsel for the Appellant and Counsel for the Respondent:

THIS COURT DOTH ORDER

That final leave be and the same is hereby granted to the said Appellant to appeal to Her Majesty in Her Privy Council against the said judgment:

AND THE COURT DOTH FURTHER ORDER

That the costs of this motion be costs in the cause.

Gordon Renwick
Registrar (Actg)

I certify that this is a true copy of the Original Order filed in the Registry of the Supreme Court of Judicature of Trinidad and Tobago.

Dated this 5th day of February, 1963.

GEORGE R. BENNY
Acting Deputy Registrar.

E X H I B I T S

Exhibits

A.1.

A.1

September 30, 1958.

Letter, Gordon Grant & Co.Ltd. to A.J.Mauritzen & Co. 30th September 1958

Messrs. A.J.Mauritzen & Co.
2 & 4 St. Vincent Street,
Port of Spain.

Dear Sirs:

We regret to inform you that we have been advised that repairing the damage done by the recent storm to property Nos. 2 & 4 St.Vincent Street, Port of Spain, would be quite un-economical; consequently we do not propose to repair the building.

In the circumstances, we enclose herewith a formal notice to quit, and trust you will soon be able to find other accommodation.

Yours faithfully,
GORDON, GRANT & CO. LTD.
Secretary.

MSJ/dh
Encl.

A.2

A.2

September 30, 1958.

Notice to Quit, Gordon Grant & Co. Ltd. to A.J. Mauritzen & Co. 30th September 1958.

To: Messrs.A.J.Mauritzen & Co.

Take notice that you are hereby required to quit and deliver up to us, possession of the portion of the premises at No.2 & 4 St. Vincent Street, Port of Spain, which you hold as a monthly tenant, on the 31st October, 1958, or at the end of the month of your tenancy, which will expire next after the end of one month from the date of the service of this notice.

For and on behalf of
GORDON, GRANT & CO. LTD.
Secretary.

Exhibits

A.3

A.3

Letter A.J.Mauritzen & Co. to Gordon Grant & Co. Ltd. 2nd October 1958.

A.J.Mauritzen & Co.

2nd October, 1958.

Your Ref MSJ/dh

Our Ref. AJM/mm.

Messrs. Gordon, Grant & Co.Ltd.,
6, St.Vincent Street,
Port of Spain.

Dear Sirs,

We beg to confirm receipt of your letter and notice to quit dated 30/9/58, and note reason for same.

As soon as we can obtain other suitable office accommodation, or as soon as you can offer us other suitable accommodation, we will vacate the office which we occupy in your premises.

We would point out that the damage to the building was caused on the 11th September, and today, three weeks later, not the slightest attempt has been made by yourselves in any way to alleviate the appalling conditions under which we have to carry on business. Quite apart from repairs, no effort has even been made to clear the existing debris which still litters the passageway, despite many promises to have this done.

Meanwhile, as you are aware, we are suffering very serious inconvenience and damage from rain, not only from the damaged gallery, but from the leaking roof and gutter spout. These must be repaired immediately, if only temporarily, otherwise we will find ourselves forced to have them done ourselves on your account.

It was noticed by your tenants in 2/4 St. Vincent Street, naturally with great interest, that repairs to your main building which houses your own offices, were effected in record time. We understood your explanation of "first things first", but did not understand that, so far as we were concerned, this meant "Never".

Exhibits

We very much regret the tone of this letter but find it impossible to express ourselves in any other way.

Yours faithfully,

A. J. Mauritzen.

A.3

Letter A.J. Mauritzen & Co. to Gordon Grant & Co.Ltd. 2nd October 1958 continued

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A.4

A.4

October 3, 1958.

Letter Gordon Grant & Co. Ltd. to A.J. Mauritzen & Co. 3rd October 1958.

Messrs. A.J. Mauritzen & Co.,
P.O. Box 471
Port of Spain.

Dear Sirs:

We acknowledge receipt of your letter of 2nd inst., and confirm ours of 30th September, 1958.

Having regard to what you state in Paragraph 4 of your letter under reply, we give you due warning that we will not and do not give you any permission to interfere in any way with our building, of which you are a monthly tenant.

Yours faithfully,

GORDON, GRANT & CO. LTD.

Secretary.

MSJ/dh.

A.5.

A.5

October 7, 1958.

Letter Gordon Grant & Co. Ltd. to A.J. Mauritzen & Co. 7th October 1958

Messrs.A.J.Mauritzen & Co.,
P.O.Box 471,
Port of Spain.

Dear Sirs:

Further to our letter of 30th September and

Exhibits

A.5

Letter Gordon Grant & Co. Ltd. to A.J. Mauritzen & Co. 7th October 1958 continued

our notice to quit, given to you on the same day, we enclose copy of notice which we have received from the City Council, directing us to do certain demolition work on the premises which you are now occupying as our tenant.

We have written to the City Council acknowledging their directions and stating that as soon as we get vacant possession from you and our other tenants, we will proceed to carry out the works which they require us to do.

Yours very truly,
GORDON, GRANT & CO. LTD.
Secretary.

MSJ/dh
Encl. (1)

A.6

Notice of City Engineer 4th October 1958

A.6.

C.R.FARRELL, B.Sc., A.M.I.C.E.
City Engineer.

City Engineer's Office,
Town Hall,
Port of Spain.
4th October, 1958.

The Owner,
2, St.Vincent Street,
Port of Spain.

N O T I C E

Your attention is directed to the condition of the building on premises assessed as No.2 St. Vincent Street, Port of Spain, which, as a result of damage done by the high winds some time ago is as under :-

(a) There is sufficient evidence that the anchorage of the roof of the main part of the building has been affected to such an extent that its resistance to wind can no longer be considered satisfactory.

Exhibits

A.6

Notice of City Engineer 4th October 1958 continued

(b) The parapet wall along the southern and western sides of the building is cracked horizontally where it was bonded to the main walls of the building.

(c) The balcony over the footways on South Quay and St. Vincent Street is without a roof and is not tied to the main building, which causes the wall enclosing it to be unstable.

(d) There are cracks in the concrete columns and beams on the first floor.

You are therefore required under Section 208 (2) of the Port of Spain Corporation Ordinance Chap.39 No.1 to take down the roof, the parapet wall along the southern and western sides of the building, and the balcony over the footways on South Quay and St. Vincent Street within thirty (30) days of the date of this notice.

C. R. Farrell.
City Engineer.

A.7

A.7

Letter A.J. Mauritzen & Co. to Gordon Grant & Co.Ltd. 31st October 1958

Your Ref: MSJ/dh.

31st October, 1958.

Messrs.Gordon,Grant & Co.Ltd.,
St. Vincent St.,
Port of Spain.

Dear Sirs,

Further to your letters of the 30th ult.,and 3rd and 7th inst., we regret to have to advise you that despite our efforts to obtain alternative accommodation to the premises we occupy here at 2/4 St.Vincent Street, we have been completely unsuccessful and are therefore presently unable to remove as per your request.

You may rest assured that we will continue to do our utmost to find reasonable suitable accommodation at the earliest possible opportunity, and can only ask you to bear with us until such time as we are successful in our quest.

Meanwhile, we would also greatly appreciate it if you are able to aid us in any way in our search.

Very truly yours,
A.J. MAURITZEN.

Exhibits

A.8

A.8

Letter J.D.Sellier & Co. to A.J.Mauritzen & Co. 7th November 1958.

13 St.Vincent Street,
Port of Spain,
Trinidad,
7th November 1958.

A.J.Mauritzen & Co.,
2-4 St.Vincent Street,
Port of Spain.

Dear Sirs,

We have been informed by our clients Messrs. Gordon Grant & Co.Ltd. that on the afternoon of the 22nd September last after a heavy rainstorm, you interfered with the flooring of the premises which you occupy of them as a monthly tenant thereby causing water which had collected on your premises to seep through and damage the celotex roofing of the office below.

Our clients tell us that they have had to repair the damage and that the cost of labour and materials amounted to $24.00. They also inform us that on the 5th instant, you again repeated your acts of nuisance and they have therefore instructed us to call upon you to desist from any further acts of this nature and to reimburse them in the sum stated above by the 12th instant.

In addition, they wish to advise that inasmuch as your tenancy terminated on the 31st October last and you have not vacated the premises they propose to institute legal proceedings against you to eject you therefrom.

Yours faithfully,

J. D. Sellier & Co.

A.9

Exhibits

10th November,1958.

A.9

Letter A.J. Mauritzen & Co. to J.D.Sellier & Co. 10th November 1958

Your Ref: LFdN:PJ
Our Ref: AJM/mm.

Messrs.J.D.Sellier & Co.,
13, St.Vincent St.,
Port of Spain.

Dear Sirs,

With reference to your letter of the 7th inst. written on behalf of your clients, Messrs.Gordon, Grant & Co.Ltd., I emphatically deny the allegation contained in the first paragraph thereof.

As regards the proposed ejectment proceedings, I can assure you that the same will be contested to the fullest extent.

Yours faithfully,
A.J.Mauritzen.

A.10

A.10

9th December, 1958

Letter Gordon Grant & Co.Ltd. to A.J. Mauritzen & Co. 9th December 1958.

Messrs.A.J.Mauritzen & Co.
P.O. Box 47,
Port of Spain.

Dear Sirs,

We would refer to our letter of October, enclosing copy of notice which we received from the City Council directing us to do certain demolition work on the premises, which you are now occupying as our tenant.

We have now been advised that certain parts of the building are in eminent danger of falling. Immediate steps, therefore, are being taken to remove the worst of these dangers.

Warning notices are being put up to this effect, and wish to draw these dangers to your attention, staff and customers.

Exhibits

A10
Letter
Gordon Grant
& Co.Ltd.
to A.J.
Mauritzen
& Co.
9th December
1958
continued

In keeping with our promise that should we hear of any alternative accommodation we would advise you, we understand that Mr. Assee of Hotel Miramar, 52 South Quay, whom we understand has an office for rent at No.90 Frederick Street.

Yours very truly,
GORDON GRANT & CO. LTD.
(Lumber & Hardware Dept.)
G.C.Howden
Director.

GCH/vr

A.11

Letter
M. Hamel
Smith & Co.
to J.D.
Sellier
& Co.
17th December
1958.

A.11

BY HAND

17th December, 1958.

Messrs.J.D.Sellier & Co.,
Solicitors &c.,
St.Vincent Street,
Port of Spain.

Dear Sirs,

Re George Howden -v- A.Mauritzen
Ejectment Complaint.

We are instructed by our client Mr.H.A. Mauritzen to request you to obtain permission from your clients Messrs.Gordon Grant & Co.Ltd. for an engineer to inspect on his behalf the premises No.2-4 St.Vincent Street of which our client is tenant of a portion.

We should be obliged if you would give this request your immediate attention as our client's instructions are that portions of this building have actually been pulled down and work is continuing in this connection.

A request for this permission has already been made by our Mr.Anthony Hamel-Smith to your Mr. Power shortly prior to 10 a.m. this morning and this letter is written in confirmation of that request.

Yours faithfully,
M. Hamel-Smith & Co.

Exhibits

A.12

RMS:MG

December 17, 1958.

A.12

Letter, J.D. Sellier & Co. to M. Hamel Smith & Co. 17th December 1958.

Messrs. M.Hamel-Smith & Co.
St.Vincent Street,
Port of Spain.

Dear Sirs,

Re: George Howden -v- A.Mauritzen
Ejectment Complaint

In reply to your letter of today's date our clients, Messrs.Gordon, Grant & Co.Ltd., are prepared to grant your client all facilities to inspect the portion of the premises which he occupies and the means of access thereto. Our clients are not prepared to give your client any further inspection of their building.

As pointed out by our Mr. Power to your Mr. Anthony Hamel-Smith our clients have no intention, for the present, of in any way interfering with your client's portion of the premises of his means of access thereto.

Yours faithfully,
J.D.Sellier & Co.

A.13

A.13

22nd December, 1958.

Letter, M. Hamel Smith & Co. to J.D.Sellier & Co. 22nd December 1958.

Messrs.J.D.Sellier & Co.,
Solicitors &c.,
13, St.Vincent Street,
Port of Spain.

Dear Sirs,

Re George Howden -v- A.Mauritzen
"Ejectment Complaint".

We acknowledge receipt of your letter of the 17th instant and are surprised to note that your clients are not prepared to give our client inspection of their building other than the premises which our client now occupies together with the

Exhibits

A.13

Letter, M. Hamel Smith & Co. to J.D.Sellier & Co. 22nd December 1958 continued

means of access thereto.

The grounds on which the present proceedings were commenced was that the premises were required for demolition and we have no doubt that your clients intend to lead evidence of the condition of these premises as a whole.

Our client is prepared to reimburse your clients, for any damage done by their engineer as a result of his inspection, though of course he assures us that no damage whatever would result from his inspection, or for any other loss which your clients may suffer thereby. Further our client is prepared to have your representative or representatives whether professional or otherwise present throughout the inspection. We may state specifically that our client is advised, that on the inspection which has so far been carried out, there is no imminent danger of any portion of the existing building falling, other than the balcony overlooking South Quay and portions of the parapet wall. Our client is however advised by his engineer that the work now being carried out on the premises may endanger the building actually in his possession and the occupants thereof.

We trust that in view of the above your clients will see the reasonableness of our request of the 17th instant and will permit the inspection requested.

Should your clients however have some good reason for refusing our request we feel sure that they will have no objection to disclosing it.

You will no doubt realise the urgency of this matter.

Yours faithfully,

M. Hamel-Smith & Co.

A.14

Exhibits

A.14

23rd December,1958.

Messrs.M.Hamel-Smith & Co.,
St.Vincent Street,
Port of Spain.

Letter, J.D. Sellier & Co. to M. Hamel Smith & Co. 23rd December 1958

Dear Sirs,

Re: George Howden vs. A.Mauritzen

Ejectment Complaint:

In reply to your letter of the 22nd December 1958 our clients are not prepared to give your clients any further inspection than that set out in our letter of the 17th December, 1958.

It is our client's every intention to see that the work being carried on now does not endanger the portion of the premises occupied by your client or the occupants thereof.

Yours faithfully

J.D.S.

A.15

A.15

23rd December, 1958.

Messrs. Gordon, Grant & Co.Ltd.,
Port of Spain.

Letter, A.J. Mauritzen & Co. to Gordon Grant & Co. Ltd. 23rd December 1958

Dear Sirs,

We confirm receipt of your letter of the 9th inst. contents of which we have noted.

With reference to the premises belonging to Mr. Assee, situate at 90 Frederick Street, we thank you for your kindness in advising us that these are available. Unfortunately, in view of the nature of our business, you will understand that they are quite unsuitable, apart from being located much too far from Customs and the Wharves.

Meanwhile we have noted that your offices on the corner of South Quay and St.Vincent, i.e.

Exhibits

A.15

Letter, A.J. Mauritzen & Co. to Gordon Grant & Co. Ltd. 23rd December 1958 continued

ground floor of No.2 St.Vincent Street, are not being used at all except for a small amount of storage. These offices are eminently suitable for our needs, and we would be very pleased indeed to take them over at any time agreeable to you. Will you please advise us the position regarding them at your earliest convenience? In advance, many thanks.

We take this opportunity of wishing you the compliments of the Season.

Yours very truly,
A. J. Mauritzen.

Your Ref: GCH/vr.
Our Ref: AJM/mm.

A.16

A.16

Letter Gordon Grant & Co.Ltd. to A.J. Mauritzen & Co. 2nd January 1959.

Port of Spain
Trinidad,B.W.I.,
2nd January, 1959.

Messrs. A.J.Mauritzen,
2-4 St.Vincent Street,
Port of Spain.

Dear Sirs,

We acknowledge receipt of yours of the 23rd instant, which came to hand on the 20th idem.

We regret to note that you do not consider the premises available from Mr.Assee at 90 Frederick Street suitable for you.

With regard to your reference to the ground floor of our premises on the Corner of South Quay and St.Vincent Street, we have to advise you that it is not our intention to offer these premises for rent as they are being used in and are necessary for our business.

Your seasons greetings are reciprocated.

Yours faithfully,
GORDON, GRANT & CO.LTD.
(Lumber & Hardware Dept)

G.C.Howden,
Director.

B.1.

Exhibits

B.1.
Photograph

PHOTOGRAPH

(Respondent's Objection
Rule 18 of the Judicial
Committee Rules 1957)

B.3.

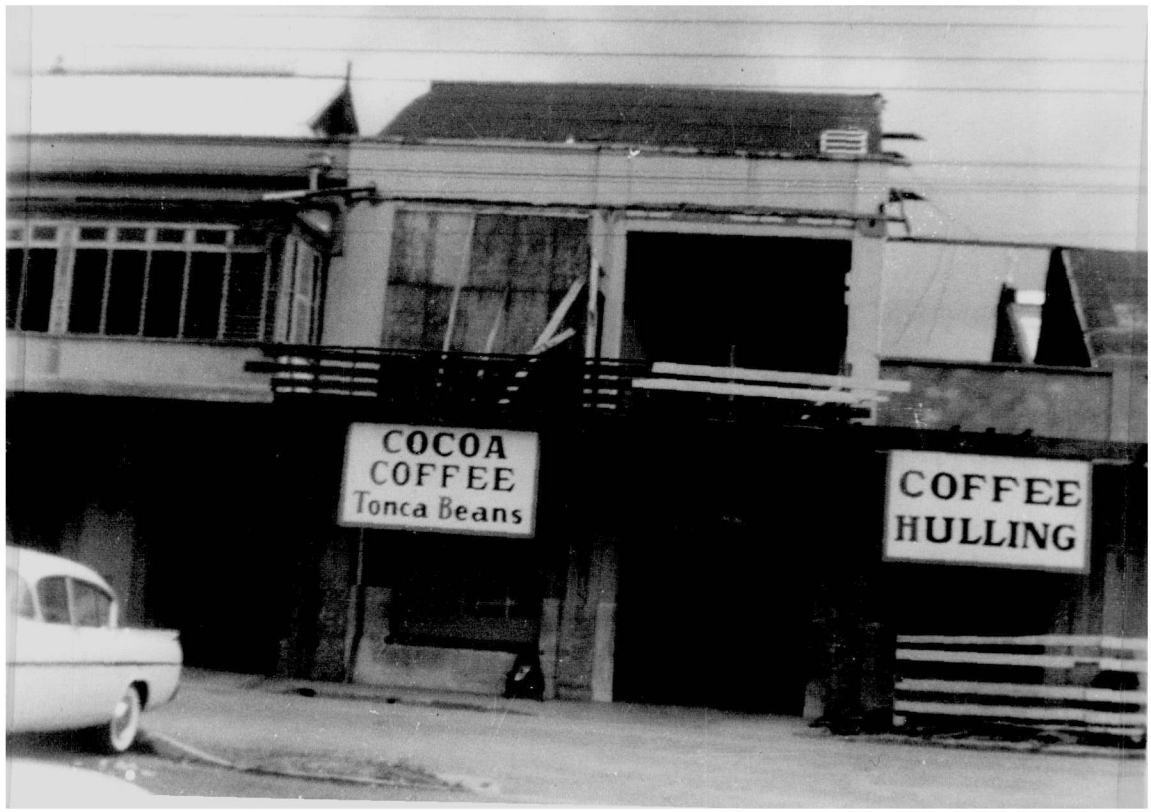
Exhibits

B.3.

Photograph

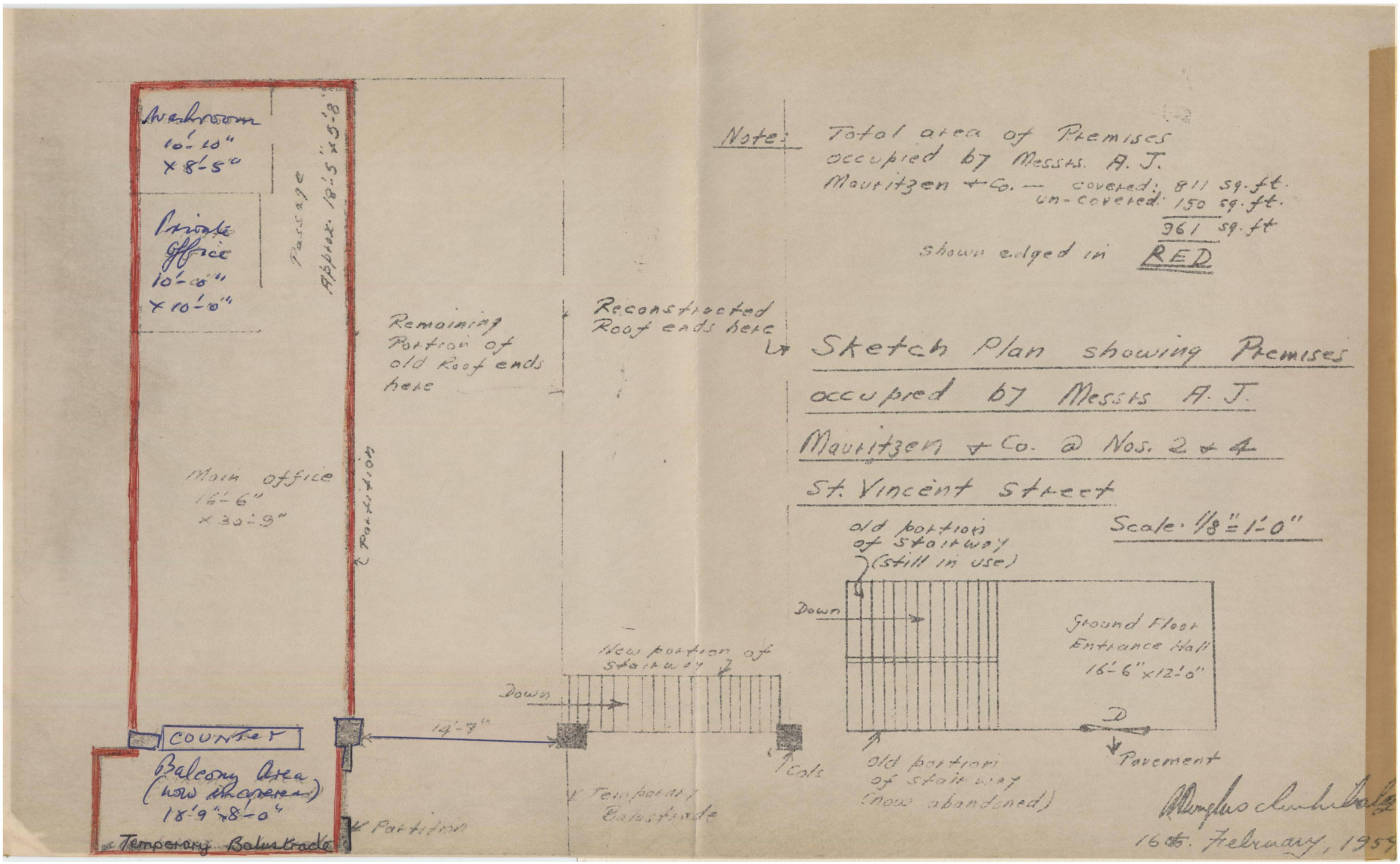
PHOTOGRAPH

(Respondent's Objection
Rule 18 of the Judicial
Committee Rules 1957)



C.

SKETCH PLAN OF PREMISES.



F.1.

Exhibits

F.1.
Photograph

PHOTOGRAPH

"G.1."

Exhibits

"G.1."
Receipt Gordon Grant & Co.Ltd. to A.J. Mauritzen & Co. 6th October 1958.

Port of Spain

Trinidad,

6.10.1958.

Received from A.J.Mauritzen & Co. Forty four dollars - rent -.

For and on behalf of

GORDON, GRANT & CO.LTD.

for Cashier

$44.00

postal stamp 5¢

"G.2."

"G.2."

Receipt Gordon Grant & Co.Ltd. to A.J. Mauritzen & Co. 10th November 1958.

Port of Spain.

Trinidad,

10.11.1958.

Received from A.J.Mauritzen & Co. Forty four dollars - rent -.

For and on behalf of

GORDON GRANT & CO.LTD.

For Cashier

$44.00

postal stamp 5¢

H.1.

Exhibits

H.1.

Photograph

PHOTOGRAPH

H.3.

Exhibits

PHOTOGRAPH

H.3.
Photograph

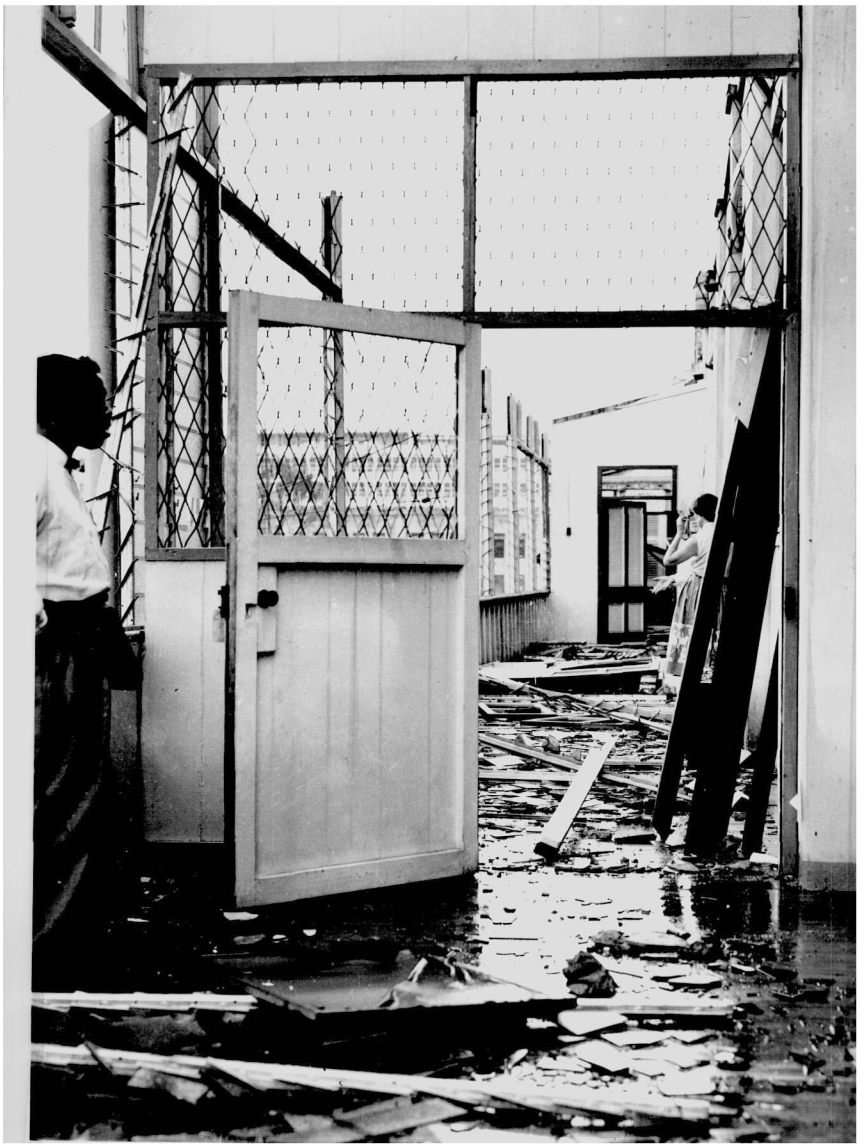
H.4.

Exhibits

H.4.
Photograph

PHOTOGRAPH

(Respondent's Objection to F.1, H.1, H.3 and H.4. Rule 18 of the Judicial Committee Rules 1957)



"K.1."

Exhibits

"K.1."

October 7, 1958.

City Engineer
Town Hall,
Port of Spain.

Letter, Gordon Grant & Co.Ltd. to the City Engineer 7th October 1958.

Dear Sir,

We acknowledge receipt of your demolition order of the 4th October in respect of our premises, 2 St. Vincent Street, Port of Spain.

It is not possible for us to commence work until the tenants on the premises quit and deliver possession to us.

We enclose copy of a letter which we have today written to our tenants. If our tenants do not comply with notice to quit which we served on them on 30th September, we shall proceed to take ejectment proceedings against them.

Yours very truly,
GORDON, GRANT & CO.LTD.
Secretary.

"K.2."

"K.2."

17th October 1958.

The City Engineer,
City Engineer's Office,
Town Hall,
Port of Spain.

Letter, Gordon Grant & Co.Ltd. to the City Engineer 17th October 1958.

Dear Sir,

Storm Damage - Premises
No.2 St.Vincent Street.

Further to your notice of the 4th October, 1958, Ref:- G-33/58; and our letter of the 7th October, Ref: MJ/DH, we wish to advise you that we have requested Mr. William Ackelsberg,

Exhibits

"K.2."

Letter, Gordon Grant & Co.Ltd. to the City Engineer 17th October 1958 continued

Contractor, to proceed with the demolition work as outlined in your notice, and also to lower the steel roof now in position to first floor level, in order to make the ground floor habitable for our Produce Department.

Work will commence as soon as the tenants have left the premises.

Yours faithfully,
GORDON, GRANT & CO.LTD.
(Lumber & Hardward Dept.)

"K.3."

"K.3."

Letter, Gordon Grant & Co.Ltd. to the City Engineer 3rd November 1958.

3rd November, 1958.

The City Engineer,
The City Engineer's Office,
Town Hall,
Port of Spain.

Storm Damage - Premises -
2 & 4 St.Vincent Street:

Dear Sir,

We would refer to your notice of the 4th October, Reference: G-33/58 regarding the above premises. Also our letters of the 7th and 17th October, Ref: GCH/vr.

With the exception of one tenant, the remaining occupants have now vacated the premises. We are now taking legal steps to have this tenant ejected and will keep you advised.

Yours faithfully,
GORDON, GRANT & CO.LTD.
(Lumber & Hardware Dept.)
G.C.Howden
Director.

"L"

Exhibits

"L"
Assessment Notice 1958 8th March 1958.

Communications to be addressed to the assessor:

OCCUPIER OF THE PREMISES IS ASKED TO FORWARD

THIS NOTICE TO THE OWNER:

PORT OF SPAIN CITY COUNCIL:

NOTICE OF ASSESSMENT - 1958

Date of Service (To be filled in by Officer serving this Notice)

8th March 1958.

Premises - 2 - 4 St. Vincent Street

Owner or Reputed Owner - William Gordon Grant

Annual Rateable Value - $979.80.

Annual House Rate (10% on the above) $97.980.

The annual house rate in respect of the year above named becomes due on the 1st day of March, 1958, and will be received without any statutory increase until the 31st day of May, 1958.

H. W. Farrell
Town Clerk.

IN THE PRIVY COUNCIL No. 21 of 1961

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

B E T W E E N:

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

- and -

GORDON GRANT AND COMPANY LIMITED (Defendant) Respondent

R E C O R D O F P R O C E E D I N G S

MAPLES TEESDALE & CO.,
6, Frederick's Place,
Old Jewry, E.C.2.
Solicitors for the Appellant.

J.N. Mason & Co.,
41-44, Temple Chambers,
Temple Avenue, E.C.4.
Solicitors for the Respondent.