alleged was the faulty construction of the wall and faulty binding and support, the narrowing of a portion of the wall after its erection, and permitting the wall to remain standing in a dangerous and insecure condition after the fire, without support. At the time of the fire Ryan was the plaintiff's tenant in possession of the plaintiff's building, and continued such possession after the fire. The plaintiff was not, after the fire, notified or called upon to repair or rebuild. There was nothing in the lease casting upon him, in the events which had happened, the obligation to do so; and he did not otherwise assume that obligation.

The defendants alleged that the wall which fell was a party wall, and that liability to maintain and repair it devolved upon the plaintiff, from which he was not relieved by anything that had happened between the adjoining owners down to the time of its collapse. The learned Judge said that a wall may be a party wall as to part of its length or part of its height and otherwise as to the remainder of it. If the part of the wall which fell was then or at any time a party wall, it was such only to the height of one storey. Above that it was built by Ryan independently and without any agreement or understanding or implication that the portion so added should be a party wall. That defence failed.

The defence that the plaintiff had been reimbursed by fire insurance also failed. The small sum he so received had no relation to the falling of the wall, but was for damage to other premises of his from the fire in January.

So, too, the defence of the Limitations Act failed.

The defence most seriously relied on was that the fall of the wall was caused by the "act of God" and not by any negligence of Ryan. But the occurrence was not due directly and exclusively to the violence of the wind. The inference from the evidence was, that the weakened and unprotected condition of the wall exposed it to the danger of collapse on the application of even a moderate degree of force. It fell during a violent storm, but not necessarily because of that violence.

Reference to Nugent v. Smith (1875), 1 C.P.D. 19, 34.

On the question of liability the learned Judge found against the defendants.

As to the damages, the plaintiff's expenditure for replacement was $2,086.70, to which should be added interest thereon from the time or times at which it was paid out. The dates of payment were not in evidence; and, if the parties could not agree upon them, the learned Judge might be spoken to and evidence might be given thereon.