

The judgment of the Court (BOYD, C., STREET, J., BRITTON, J.), was delivered by

BOYD, C.:—There appears to be no dispute on the whole of the evidence that the roof of the building in which plaintiff occupied the store part, was removed by the orders of defendant, and when thus exposed a rain storm came on which came through the floor overhead of plaintiff's store and to some extent wet and damaged his stock of goods. This was done without warning or notice to plaintiff, and the storm during the night wrought the damage which was first discovered on the following day by plaintiff. He made some complaint of it and called in a traveller to look at the damage. Defendant knew that the rain had come in and spoke to plaintiff about it, and according to her account he made light of it. It was agreed at the trial that if any damage was shewn the amount should be ascertained by the Master—if on the main part of the case there was any cause of action.

The learned Chief Justice has found upon the evidence that notice of some improvements contemplated was given to plaintiff, and that he was content to have them made and so cannot complain on that score. But the evidence is, to my mind, very vague as to what was communicated to plaintiff. It seems well proved that she told him she was going to raise the building, but this he attributes to the White House hotel adjoining the premises occupied by plaintiff. Granted that some information was given, it is clear that no notice was given to plaintiff that the roof was going to be taken off and so expose his stock to the likely contingency of a rain storm or other damage from the elements. The raising of the building would not involve the removal of the roof, and he was not warned so as to be able to protect himself. He was rightly in possession of the store part and had no rights in or control over the floor overhead and the roof above that which was taken off. As one rightly in possession with a stock of goods he was entitled to complain and recover damages if by the negligent act of defendant they were exposed to the rain and rendered less saleable. This aspect of the case does not seem to have been presented at the trial, though it is set forth in the 5th paragraph of the statement of claim.