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UNIVERSITY OF LONDON  
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-3 JUL 1956  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

In the Privy Council

No. 7 of 1954.

43518

ON APPEAL FROM THE SUPREME COURT OF  
TRINIDAD AND TOBAGO  
(APPELLATE JURISDICTION)

BETWEEN

PORT OF SPAIN CORPORATION... .. *Appellants*

AND

GORDON, GRANT & CO., LIMITED ... .. *Respondents.*

RECORD OF PROCEEDINGS

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# In the Privy Council.

No. 7 of 1954.

## ON APPEAL FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO (APPELLATE JURISDICTION)

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BETWEEN

PORT OF SPAIN CORPORATION... .. *Appellants*

AND

GORDON, GRANT & CO., LIMITED ... .. *Respondents.*

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### RECORD OF PROCEEDINGS

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No. 1.

Notice of Appeal.

TRINIDAD AND TOBAGO.

The Port of Spain Corporation Ordinance Ch. 39 No. 1.

To :—

The Stipendiary Magistrate  
for the County of St. George West.

11456

In the  
Magistrate's  
Court for  
County of  
St. George  
West.

No. 1.  
Notice of  
Appeal.  
24th  
October  
1951.

10 TAKE NOTICE that GORDON, GRANT & Co., LTD. (hereinafter called the Company) the owners of the rateable hereditaments known as No. 78 South Quay, in the City of Port of Spain HEREBY APPEALS against the decision (communicated to the Company on the 18th day of October, 1951) of the Port of Spain Corporation on the objection by the Company to the valuation made by the said Port of Spain Corporation of the said premises by which decision hereby appealed from, the Port of Spain Corporation confirmed its valuation of the premises the annual rateable value whereof it fixed at the sum of Six thousand, six hundred dollars.

Dated this 24th day of October, 1951.

(Sgd.) J. D. SELLIER & CO.,  
*Solicitors for GORDON, GRANT & Co., LTD.*

In the  
Magistrate's  
Court for  
County of  
St. George  
West.

## No. 2.

## Magistrate's Reasons.

No. 2.  
Magistrate's  
Reasons.  
15th  
August  
1952.

This is an Appeal under the Port of Spain Corporation Ordinance Ch. 39 No. 1 (secs. 87 & 104) against valuation of premises 78 South Quay owned by Gordon, Grant & Co., Ltd., at the annual rateable value of \$6,600. The Appellants gave evidence through their Secretary and at page four he gives the history of the premises since 1931. In his opinion if there were no statutory restrictions as to rent, the Appellants could secure a rent of \$400 to \$480 per month.

The Court visited the premises and formed the opinion that the 10 valuation did not err on the side of conservatism.

The Appellants contended that the Archer Coal Depot Coy. were in occupation of the premises at a monthly rental of \$132.00 which represented the maximum rent which, under the Rent Restriction Ord., the Appellants were entitled to charge and that the Respondents were bound by the arbitrary limit. At page four Counsel for the Appellants sets out fully their position.

The legal issues shortly were as follows :—

(a) Whether the Rent Restriction Ordinance, 1941, in its application to the said hereditament was to be taken into account 20 in arriving at the valuation of the said hereditament under and for purposes of the Port of Spain Corporation Ordinance Ch. 39 No. 1.

(b) Whether the highest gross value which could be assigned to and placed upon the said hereditament for the purpose of assessment was the "standard rent" being the rent ascertained in accordance with the Rent Restriction Ordinance i.e. the rent payable on the prescribed date, the 1st July, 1940, plus the increase or increases provided for and set out in Section II (1) and (2) of the Ordinance. 30

These two points were settled by the House of Lords case of the *Poplar Union Assessment Committee vs. Roberts*, 1922.

Counsel for the Appellants sought to distinguish this case from the present case on the ground that the incidence of the tax fell upon the owner in this Colony instead of the occupier as in the United Kingdom; and further it was a criminal offence here to receive rent in excess of the standard rent whereas in the U.K. although such excess rent was not enforceable, it was not a criminal charge to pay or receive such rent.

These considerations to my view are immaterial since the yard stick of value is not what the owner may legally receive but what rent it would be reasonable for a tenant to give for the beneficial occupation—purely a 40 hypothetical and not the actual rent i.e. the rent which he would give if he were free to give it.

The Rent Restriction Ordinance by 11 (1) (c) contemplates and provides a difference in such rating and enables the landlord as in the United Kingdom, to pass on to the tenant an enhanced burden of rates falling on himself, without disturbing between an enhancement due to increased rateable value and one due only to increased poundage.

In the Magistrate's Court for County of St. George West.

That being my view I accepted the higher figure quoted by the witness in this case as being reasonable to expect viz. :—\$480.00 per month and assessed the annual rateable value at \$5,760.00. No order as to costs.

No. 2. Magistrate's Reasons. 15th August 1952—*continued.*

10

(Sgd.) B. W. CELESTAIN,  
*Ag. Ch. Magistrate.*

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No. 3.  
Order of Assessment.

No. 3. Order of Assessment. 15th August 1952.

County of St. George West.

GORDON, GRANT AND CO., LTD. ... .. *Appellants*

*versus*

THE PORT OF SPAIN CORPORATION ... .. *Respondents.*

GORDON, GRANT & CO., LTD., HAVING MADE AN APPEAL to the said Court against the decision of the Port of Spain Corporation fixing the annual rateable value of premises known and assessed as No. 78 South 20 Quay in the City of Port of Spain at Six thousand six hundred dollars (\$6,600.00).

And both the said parties having appeared before me (through Counsel) the said Court in order that it should hear and determine the said Appeal, whereupon the matter of the said Appeal being by the said Court duly considered. the Court fixes the annual rateable value of the said premises at Five thousand seven hundred and sixty dollars (\$5,760.00).

Dated this 15th day of August, 1952.

(Sgd.) B. W. CELESTAIN,  
*Ag. Ch. Magistrate.*

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In the  
Supreme  
Court.

No. 4.  
Notice of Dissatisfaction and Appeal.

No. 4.  
Notice of  
Dissatis-  
faction and  
Appeal.  
22nd  
August  
1952.

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.  
(APPELLATE JURISDICTION.)

In the Matter of the objection by Gordon, Grant & Co. Ltd. to the  
Assessment of the premises known as 78 South Quay.

To R. G. Archbald, Esq.,  
Clerk of the Peace.

TAKE NOTICE that we, GORDON, GRANT & CO. LTD. being  
dissatisfied with the decision of the Magistrate in the above matter, by  
which the said Magistrate fixed the annual rateable value of the above  
premises at the sum of Five Thousand Seven hundred and Sixty dollars  
\$5,760) do appeal against such decision on the following grounds :— 10

That the decision is erroneous in point of law in that the  
learned Magistrate excluded altogether from consideration upon  
his assessment the force and effect of the Rent Restriction  
Ordinance.

Dated this 22nd day of August, 1952.

(Sgd.) J. D. SELLIER & CO.,  
*Solicitors for*  
GORDON, GRANT & CO. LTD.

20

Note : The Defendant Company requires a free copy of the Notes of evidence  
in this matter.

To : The Port of Spain Corporation,  
Princes' Building, Port of Spain.

No. 5.  
Judgment.  
30th April  
1953.

No. 5.  
Judgment.

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.  
(APPELLATE JURISDICTION.)

No. 291 of 1952. 30

Between  
GORDON, GRANT & CO. LTD. ... .. *Appellants*  
and  
PORT OF SPAIN CORPORATION ... .. *Defendants.*

This is an appeal from an order of the then Acting Chief Magistrate  
fixing the annual rateable value of premises assessed as No. 78 South

Quay, Port of Spain, of which the Appellants are the owners, in the sum of \$5,760.

The facts as proved before the magistrate are that the Appellants are the owners of 78 South Quay, Port of Spain, which premises have been continuously let to the Archer Coal Depot Inc. or their predecessors since 1924 on a monthly tenancy. The rent on January 1st 1940 was \$120 which was increased in 1948 by \$12 per month by adding the permitted increase of 10 per cent. to the rent. For the triennial period 1945 to 1947 the premises were assessed at a rateable value of \$1,460 by the Respondents ;  
 10 for the period 1948 to 1950 the rateable value was fixed at \$1,608. At the triennial valuation for 1951 to 1953 the rateable value was increased to \$6,600. Against this assessment the owners appealed and the acting Chief Magistrate reduced the amount to \$5,760.

The method of fixing the annual rateable value of any rateable hereditament in Port of Spain is set out in Section 89 (1) of the Port of Spain Corporation Ordinance, Chap. 39, No. 1. This section provides that " the Corporation shall, whether such hereditament be actually rented  
 " or not, consider in every case what amount of annual rent a tenant may  
 " be reasonably expected to pay for such hereditament, having regard to  
 20 " the purpose for which such hereditament is actually used, or, in case  
 " it is not actually used or occupied, the purpose or purposes for which it  
 " is reasonably suitable." Section 101 of the Ordinance provides that the annual rate or tax to be paid in respect of every rateable hereditament shall be borne or paid by the owner of such hereditament. In England there is this difference that the general rule established by the Poor Relief Act 1601 (43 Eliz.) C.I is that the incidence of the tax falls on the occupier.

The rateable value of hereditaments liable to any rate in England is defined in Section 4 of the Valuation (Metropolis) Act 1869 (32 and 33 Vic. c. 67). Rateable value, according to this Act, means the  
 30 gross value after deducting therefrom the probable annual average cost of the repairs, insurance, and any other expenses, if any, necessary to maintain the hereditament in a condition to command the gross rent. Gross rent is defined by the same Act as the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenants rates and taxes, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and any other expenses aforesaid. A comparison of the provisions of the Valuation (Metropolis) Act 1869 and of the Port of Spain Corporation Ordinance with respect to the valuation of rateable hereditaments leads  
 40 one to the conclusion that, though there are minor differences, the method of fixing the annual rateable value is substantially the same under both enactments. Both systems presuppose a hypothetical landlord and a hypothetical tenant, and the thing or res in respect of which these hypothetical persons fix a hypothetical rent is the occupation value of the hereditament. In determining this hypothetical rent, the actual hereditament, to use the words of Lord Buckmaster in *Port of London Authority vs. Assessment Committee of Orsette Union and Others* (1920)

In the  
Supreme  
Court.

No. 5.  
Judgment.  
30th April  
1953—  
*continued.*

In the  
Supreme  
Court.

No. 5.  
Judgment.  
30th April  
1953—  
*continued.*

A.C. 273 at page 305, “ must be the particular hereditament as it stands, “ with all its privileges, opportunities and disabilities created or imposed “ either by its natural position or by the artificial conditions of an Act “ of Parliament.” The actual rent received or paid may be and no doubt is of assistance in fixing, but cannot conclude the determination of the inquiry into the rateable value. If some statutory restriction limits the occupational value of the premises, though the Act or Ordinance makes no reference to rating, this limitation must in our view be considered in fixing the annual rateable value.

For the Respondent it has been submitted that in the final analysis there is no difference between what a tenant may reasonably be expected to pay and what a landlord may reasonably expect to receive for a particular hereditament. This submission appears to be unexceptionable since it is the same subject matter, namely the occupation value of the hereditament, which forms the basis of the hypothetical bargain between the two parties. From this proposition learned Counsel for the Appellants has endeavoured to deduce that, inasmuch as the incidence of the tax falls on the owner in this Colony, and not as in England on the occupier, the rating authority in fixing the rateable value must consider what is the occupational value of the hereditament to him, and not what it is to the occupier. In support of this contention he pointed out that, whereas in England an unoccupied hereditament is not rateable, in this Colony the owner is liable to be rated whether the premises are occupied or not. This submission rests on the assumption that there is a difference between the occupation value of premises to the tenant and its value to the landlord. This appears to us to be a fallacy as the rateable value of premises does not depend on the respective benefits of the premises either to the occupier or the owner. The rateable value of an hereditament depends, in the words of Section 89 (1) of the Port of Spain Corporation Ordinance, on the hereditament and the purpose for which it is actually used or the purpose or purposes for which it is reasonably suitable. This is an objective standard based on the nature of the hereditament itself with all its privileges, opportunities and disabilities. Premises in England which are occupied are not liable to be rated for the simple reason that there is no occupier to pay the rate or tax.

It appears to us that the question to be answered in this case remains the same whether the incidence of the rate falls on the owner or on the occupier.

The second point submitted on behalf of the Appellants is that the Rent Restriction Ordinance No. 13 of 1941, by making it a statutory offence punishable on summary conviction for a landlord to receive or for a tenant to pay more than the permitted rent, has fixed the rent which a tenant may reasonably be expected to pay. Great reliance has been placed, with respect to this submission, on the decision in Assessment Committee of the *Metropolitan Borough of Poplar vs. Roberts* (1922) 2.A.C. 93. Stated shortly the decision in that case was to the effect that the Mortgage and Rent Restriction Act, 1920, did not affect the rateable value of any hereditament falling within the Act. The Mortgage and Rent Restriction Act, 1920,



limited the amount of rent recoverable by a landlord of a dwelling house of a certain rateable value to the standard rent as defined in Section 12, together with certain increases permitted by Sec. 2. In the course of their opinions the learned Lords of Appeal pointed out that this Act was of a temporary nature, limited in the range of its application, and had no effect on the occupational value but only limited the landlord's right to the recovery of the standard rent. Lord Sumner in his opinion gave a further reason for the decision. If the rateable value of hereditaments falling within the ambit of the Mortgage and Rent Restriction Act was fixed or

10 limited by the permitted rent, these properties would secure an advantage over other properties in the same rating area, the rents of which were not affected by the Act, and the rates would cease to be equitable as between all the rate-payers. If the Rent Restriction Ordinance, 1941, were in similar terms to the Mortgage and Rent Restriction Act, 1920, this Court would be bound to follow that decision. But these two statutes appear to differ materially. The object of the Rent Restriction Ordinance as stated in the full title, is to restrict the rents of the premises to which it is applicable. It applies to hereditaments of all kinds, except agricultural land, both furnished and unfurnished. It establishes a standard rent for all premises

20 affected, and the methods for fixing rentals in different categories of letting are designed to secure a uniform and equitable standard of rents. Finally it introduces a penal sanction for enforcing its provisions. Section 10 (3) of the Ordinance provides that if a landlord knowingly receives, or a tenant knowingly pays, any rent which is by this Ordinance made irrecoverable he shall be guilty of an offence against the Ordinance. The Ordinance has now been in force for twelve years, and it would be erroneous and misleading to describe it, as Lord Atkinson described the Mortgage and Rent Restriction Act, as a temporary measure dealing only with one class of hereditament. The effect of these differences between the Mortgage and Rent Restriction

30 Act, 1920, and the Rent Restriction Ordinance is, in our opinion, to make the reasoning and the conclusion reached in the *Poplar* case inapplicable to the circumstances of this case.

In the final analysis rent, for the purposes of fixing the annual rateable value of an hereditament, is the sum which a tenant may reasonably be expected to pay for the beneficial occupation. In ascertaining what a tenant might reasonably be expected to give as rent, as Lord Halsbury said in *Cartwright vs. The Guardians of the Poor of the Sculcoates Union* (1899) 1 Q.B. at page 673, "all that could reasonably affect the mind of the intending tenant ought to be considered." Hypothetical though he be, the tenant

40 is not absolved from obedience to a statute which has as its object the restriction of rents and enforces this restriction by a penal sanction. The rule is well established that the hypothetical tenant must be supposed to occupy under the same statutory restrictions as the actual tenant. Like an actual tenant he cannot, without breach of the Ordinance, offer more for the beneficial occupation nor can the owner accept more than is permitted by the Ordinance. Just as the earning capacity of an hereditament may be sterilized by statutory provisions so also the occupation value of premises may be frozen by legislative enactment. To hold otherwise would be to

In the  
Supreme  
Court.

No. 5.  
Judgment.  
30th April  
1953—  
*continued.*

In the  
Supreme  
Court.

No. 5.  
Judgment.  
30th April  
1953—  
*continued.*

assert that a rating authority has power to imagine a notional tenant above the law and not amenable to the command of the legislative sovereign.

For these reasons we are of opinion that the appeal should be allowed, that the order of the Magistrate fixing the annual rateable value for the triennial period 1951 to 1953 of the premises at 78 South Quay, Port of Spain should be varied by substituting \$1,608 for \$5,760 and that the Respondent pay the costs of this appeal to be taxed.

J. L. MATHIEU-PEREZ,  
*Chief Justice.*

E. R. L. WARD,  
*Puisne Judge.* 10

30th April, 1953.

No. 6.  
Notice of  
Motion to  
Appeal.  
11th May  
1953.

No. 6.  
Notice of Motion to Appeal.

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.  
(APPELLATE JURISDICTION.)

No. 291 of 1952.

|                                  |         |                               |
|----------------------------------|---------|-------------------------------|
|                                  | Between |                               |
| GORDON, GRANT & CO., LTD. ... .. | and     | ... .. <i>Appellants</i>      |
| PORT OF SPAIN CORPORATION ... .. |         | ... .. <i>Respondents.</i> 20 |

TAKE NOTICE that this Honourable Court will be moved on Tuesday the 19th day of May, 1953, at the hour of 9.30 o'clock in the forenoon, or so soon thereafter, as Counsel can be heard by the Honourable Leonard Courtenay Hannays, one of Her Majesty's Counsel learned in the law, for an order granting to the Respondents leave to appeal to Her Majesty in Council against the judgment of the Full Court delivered herein on the 30th day of April 1953, on the ground

- (a) that the appeal involves directly or indirectly some claim or question to or respecting property amounting to or of the value of £300.0.0 sterling or upwards and/or 30
- (b) that the question involved in the appeal is one which by reason of its general and/or public importance or otherwise ought to be submitted to Her Majesty in Council for a decision

on such terms and conditions as to the Court may seem fit.

Dated this 11th day of May, 1953.

PROCOPE & CLARKE,  
*Solicitors for the Respondents,*  
the Mayor, Aldermen and Citizens of the  
City of Port of Spain, hereinabove  
described as the Port of Spain Corporation. 40

To : Messrs. J. D. Sellier & Co., Solicitors  
for Gordon, Grant & Co., Ltd., the above-  
named Appellants.

No. 7.  
Affidavit of Jack Arthur Procope.

In the  
Supreme  
Court.

I, JACK ARTHUR PROCOPE, of the City of Port of Spain in the Island of Trinidad, Solicitor, make oath and say as follows :—

No. 7.  
Affidavit of  
J. A.  
Procope.  
11th May  
1953.

1. I am the senior partner of Procope & Clarke, Solicitors for the Mayor, Aldermen and Citizens of the City of Port of Spain, hereinabove called Port of Spain Corporation and I have the conduct of these proceedings on their behalf.

2. The Appellants are the owners of the rateable hereditament, 10 No. 78, South Quay, in the City of Port of Spain, and the Corporation fixed the annual rateable value of the said rateable hereditament for the purposes of the Port of Spain Corporation Ordinance Ch. 39 No. 1, having regard to the purpose for which such hereditament is actually used, for the triennial period 1951–1953, at the sum of \$6,600.00.

3. Section 89 of the Port of Spain Corporation Ordinance Ch. 39 No. 1 provides as follows :—

20 “ (1) In determining the annual rateable value of any rateable hereditament for the purposes of this Ordinance, the Corporation shall, whether such hereditament be actually rented or not, consider in every case what amount of annual rent a tenant may be reasonably expected to pay for such hereditament, having regard to the purpose for which such hereditament is actually used or, in case it is not actually used or occupied, the purpose or purposes for which it is reasonably suitable.

30 “ (2) Where any rateable hereditament is leased or rented to a tenant who is under obligation to pay any rates or premiums of insurance against loss or damage by fire or otherwise in respect thereof, or who is under obligation to pay any land rent which his landlord is liable to pay to the owner of the site of such rateable hereditament then, the annual rateable value of such hereditament shall be the amount of the valuation thereof ascertained in accordance with subsection (1) of this section, with the addition of a sum equal to the rate computed on such valuation, and the amount of the premium payable in respect of such insurance and the land rent which the landlord is liable to pay to the owner of the site.”

4. There are two other Municipal Corporations in the Island of Trinidad, namely :

40 (a) The Mayor, Aldermen and Burgesses of the town of San Fernando constituted by the San Fernando Corporation Ordinance Ch. 39, No. 7 ; and

In the  
Supreme  
Court.

(b) The Mayor, Alderman and Burgesses of the town of Arima  
constituted by the Arima Corporation Ordinance Ch. 39 No. 11.

No. 7.  
Affidavit of referred to,  
J. A. Procopé,  
11th May  
1953—  
*continued.*

5. By Section 100 of the San Fernando Corporation Ordinance above  
referred to, the mode of fixing the annual rateable value of any rateable  
hereditament for the purpose of that Ordinance is prescribed as follows :—

“ (1) In determining the annual rateable value of any rateable  
“ hereditament for the purpose of this Ordinance the Commissioner  
“ shall, whether such hereditament be actually rented or not,  
“ consider in every case what amount of annual rent a tenant  
“ may reasonably be expected to pay for such hereditament, having 10  
“ regard to the purpose for which such hereditament is actually  
“ used, or in case it is not actually used or occupied, the purpose  
“ or purposes for which it is reasonably suitable.

“ (2) Where any rateable hereditament is leased or rented  
“ to a tenant who is under obligation to pay rates in respect  
“ thereof or premiums of insurance against any loss or damage by  
“ fire, or otherwise in respect thereof, or who is under any obliga-  
“ tion to pay any land rent which his landlord is liable to pay to  
“ the owner of the site of such rateable hereditament ; then the  
“ annual rateable value of such hereditament shall be the amount 20  
“ of the valuation thereof ascertained in accordance with  
“ subsection (1) of this section, with the addition of a sum equal  
“ to the rate computed on such valuation, and the amount of the  
“ premium payable in respect of such insurance and the land rent  
“ which the landlord is liable to pay to the owner of the site.”

6. The method prescribed by the Arima Corporation Ordinance for  
fixing the annual rateable value of any rateable hereditament in the town  
of Arima is provided for by Section 100 of the said Arima Corporation  
Ordinance as follows :—

“ (1) In determining the annual rateable value of any 30  
“ rateable hereditament for the purpose of this Ordinance, the  
“ Commissioner shall, whether such hereditament be actually  
“ rented or not, consider in every case what amount of annual  
“ rent a tenant may reasonably be expected to pay for such  
“ hereditament, having regard to the purpose for which such  
“ hereditament is actually used, or in case it is not actually used  
“ or occupied, the purpose or purposes for which it is reasonably  
“ suitable.

“ (2) Where any rateable hereditament is leased or rented  
“ to a tenant who is under obligation to pay rates in respect 40  
“ thereof, or premiums of insurance against any loss or damage  
“ by fire, or otherwise in respect thereof, or who is under any  
“ obligation to pay any land rent which his landlord is liable to  
“ pay to the owner of the site of such rateable hereditament, then

“ the annual rateable value of such hereditament shall be the amount of the valuation thereof ascertained in accordance with subsection (1) of this section, with the addition of a sum equal to the rate computed on such valuation, and the amount of the premium payable in respect of such insurance and the land rent which the landlord is liable to pay to the owner of the site.”

In the  
Supreme  
Court.  
—  
No. 7.  
Affidavit of  
J. A.  
Procope.  
11th May  
1953—  
*continued.*

7.—From paragraphs 3–6 hereof inclusive, it appears that the three Corporations therein referred to are required by statute to use the same mode of fixing the annual rateable value of any rateable hereditament within their respective boundaries.

8.—On the 18th day of October, 1951, the Port of Spain Corporation confirmed the annual rateable value of the rateable hereditament, No. 78 South Quay aforesaid, at the sum of \$6,600.00 and levied house rate on the said rateable hereditament at the annual sum of \$660.00, and, in virtue of the provisions in that behalf, the Appellants appealed against such assessment to the Magistrate of the County of St. George West. The rates payable to the Respondents computed on the said valuation for the triennial period amount to \$3,300.00 as I am informed by Eric Johnston, Chief Assessment Officer in the service of the Port of Spain Corporation and verily believe. The ground of my belief is that the said Eric Johnston is the person responsible for computing the several rates levied by the Corporation on any rateable hereditament based upon the annual rateable value thereof as fixed by the Corporation.

9.—On the 15th day of August, 1952, the said Magistrate varied the said annual rateable value from \$6,600.00 to \$5,760.00.

10.—On the 22nd day of August 1952, the Appellants appealed against this decision to the Full Court on the ground that the said decision of the said Magistrate was erroneous in point of law in that he excluded altogether from consideration upon his assessment the force and effect of the Rent Restriction Ordinance.

11.—On the 30th day of April, 1953, the Full Court allowed the said appeal and held that the Rent Restriction Ordinance No. 13 of 1941 as amended by No. 4 of 1943 was different in terms and effect to the Mortgage and Rent Restriction Act 1920, in that

- (a) it was not of a temporary nature, and
- (b) it prescribed a criminal remedy against either the landlord or the tenant paying or receiving any rent in excess of the standard rent of any premises

and in the circumstances the said Ordinances were inapplicable, and that a hypothetical tenant could not pay more rent than could legally be demanded and fixed the annual rateable value of the said rateable hereditament at \$1,608.00 instead of \$5,760.00.

In the  
Supreme  
Court.

No. 7.  
Affidavit of  
J. A.  
Procope.  
11th May  
1953—  
*continued.*

12.—I am advised by Counsel and verily believe that the rent to be taken into account in determining the annual rateable value of a rateable hereditament, is not the actual rent (which is the effect of the judgment of the Full Court) and that, consequently, the said Judgment is of great public importance since it will have the effect of radically changing the mode prescribed by the Port of Spain Corporation Ordinance Section 89, the San Fernando Corporation Ordinance Section 100 and the Arima Corporation Ordinance Section 100. I am also advised by Counsel and verily believe that the said judgment on the questions decided thereby involves directly or indirectly claim or questions to or respecting property of the value of £300.0.0. or upwards. The ground of my belief is the competence of Counsel so to advise. 10

Sworn to at No. 33 Abercromby }  
Street, in the City of Port of } (Sgd.) J. ARTHUR PROCOPE.  
Spain, this 11th day of May 1953 }

Before me,  
(Sgd.) O. E. MORLE,  
*Commissioner of Affidavits.*

This affidavit is filed on behalf of the Respondents.

No. 8.  
Judgment.  
13th June  
1953.

No. 8.  
**Judgment.**

20

This is an application by the Port of Spain Corporation for leave to appeal to Her Majesty in Council against the judgment of the Full Court delivered on the 30th day of April 1953 in this matter.

Mr. O'Reilly for the Respondents took an objection *in limine* to the jurisdiction of the Full Court to entertain the application, firstly, because it was not one that came within the scope of the provisions of the (Imperial) Order in Council dated the 2nd April, 1909, as amended by the Order in Council dated the 30th March, 1914, and, secondly, that the Court was bound by its own judgment in the case of *Pillai v. Griffith*, dated the 29th March, 1952. 30

The relevant provisions are contained in Sections 1 and 2 of the Order. By Section 2 (a) it is provided that an appeal shall lie as of right from any final judgment of the Court where the matter in dispute on the Appeal amounts to or is of the value of £300 sterling or upwards. Section 2 (b) provides further that an appeal shall lie, at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if in the opinion of the 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. 40

For the purposes of this submission the important factor is the meaning of the word "Court" which is defined in Section 1 as "either the Full Court or a single Judge of the Supreme Court of Trinidad and Tobago according as the matter in question is one which, under the Rules and Practice of the Supreme Court, properly appertains to the Full Court or to a single Judge."

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*continued.*

In *Pillai v. Griffith* the Full Court held that it had no jurisdiction to entertain an application for leave to appeal to Her Majesty in Council from a decision of the Full Court on an appeal from a Summary Court.

10 A Summary Court, as defined in Section 2 of the Summary Courts Ordinance (Ch. 3 No. 4) means any Magistrate or Justice when sitting in open Court to hear and determine any matters within his power and jurisdiction, either under the provisions of this Ordinance or under the provisions of any other enactment, and such Magistrate or Justice, when so sitting as aforesaid, shall be and be deemed to be a "Court" or "Summary Court" or "Court of Summary Jurisdiction" within the meaning of the Ordinance.

20 By Section 104 (2) of the Port of Spain Corporation Ordinance (Ch. 39 No. 1) a Magistrate is empowered to hear appeals from a decision of the Corporation on any objection to any valuation or alteration of valuation made by the Corporation under the powers conferred by the Ordinance. The Magistrate is empowered on the hearing of any such appeal to summon and compel the attendance of witnesses, to examine witnesses on oath, to require the production of any relevant books and papers, and, if necessary, to enter and inspect the hereditaments.

Section 105 of the same Ordinance confers a right of appeal to the Full Court on the Corporation or any owner who shall be dissatisfied with the decision of the Magistrate on any appeal against a decision of the Corporation.

30 The doctrine of *stare decisis* or judicial precedent is not a statutory provision or a rule of the common law, but it is none the less a well-established rule of practice. That it is not an inflexible rule is clear from the judgment of the Court of Criminal Appeal in *Rex vs. Taylor* (1950) 66 T.L.R. 1182. The question of the authority of judicial precedent was fully considered by the Full Court of Appeal in England in *Young v. Bristol Aeroplane Co., Ltd.* (1944) 2 A.E.R. 293. In this case Lord Greene, M.R., cited with approval the judgment of Lord Cozens-Hardy, M.R., in *Valesquez, Ltd. v. Inland Revenue Commissioners* (1914) 3 K.B. 458 and quoted the following from that judgment: "But there is one rule by which, of course,  
40 "we are bound to abide—that when there has been a decision of this Court  
"upon a question of principle, it is not right for this Court, whatever its  
"own views may be, to depart from that decision. There would otherwise  
"be no finality in the law."

This view did not go unchallenged for in *Newsholme Bros. v. Road Transport and General Insurance Co.* (1929) 2 K.B. 356, Greer L.J. said at page 384: "I should like to point out this fact, that this Court has, at least on two occasions, sitting as a Full Court, differed from a previous decision by the same court; and it seems to me that, if that is right, it is equally right to say that, sitting with a quorum of three judges, it has

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“ exactly the same power as if it were sitting with six judges, though it  
“ would only be in most exceptional cases that those powers would be  
“ exercised.” The Full Court of Appeal, however, in *Young v. Bristol  
Aeroplane Company, Limited* held that it was bound by its own decisions or  
by the decisions of a court of co-ordinate authority unless there were firstly,  
conflicting decisions of the Court, in which case it would be free to choose  
which of the two decisions it preferred, and, secondly, where the decision  
of the Court had been given *per incuriam*.

It appears to us that similar rules in regard to the binding authority of  
decisions of the Full Court must be taken to be effectual in this Colony ; 10  
otherwise there would be no finality in the law. It cannot be argued that  
the judgment in *Pillai v. Griffith* was given *per incuriam* for the Court stated  
expressly that it was asked to decide the question and, after citing and  
considering the relevant provisions of the Order in Council, did so.

We consider, therefore, that unless it can be shown that this appeal  
is not an appeal from a summary court, we are bound by the previous  
decision of this Court. In our opinion the definition of “ Summary Court ”  
in section 2 of the Summary Courts Ordinance makes it clear that a decision  
of a Magistrate under Section 104 (2) of the Port of Spain Corporation  
Ordinance is a decision of a summary court. 20

The application is therefore dismissed with costs to be taxed.

S. E. GOMES,  
*Puisne Judge.*

E. R. L. WARD,  
*Puisne Judge.*

13th June, 1953.

No. 9.  
Order  
Dismissing  
Motion for  
Leave to  
Appeal.  
13th June  
1953.

No. 9.  
**Order dismissing Motion for Leave to Appeal.**

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.  
(APPELLATE JURISDICTION.)

No. 291 of 1952. 30

Between  
GORDON, GRANT & Co., LTD. ... .. *Appellants*  
and  
PORT OF SPAIN CORPORATION ... .. *Respondents.*

Entered the 13th day of June, 1953.

On the 13th day of June, 1953.

Before

The Honourable Mr. Justice S. E. GOMES and  
The Honourable Mr. Justice E. R. L. WARD.



UPON MOTION MADE UNTO THE FULL COURT by the above-named Appellants for leave to appeal to Her Majesty in Council against the Judgment of the Full Court, bearing date the 30th day of April, 1953, upon hearing Counsel for both parties, and the said Court having ordered that this matter should stand for judgment and the matter standing for judgment in the paper this day.

In the  
Supreme  
Court.  
—  
No. 9.  
Order  
Dismissing  
Motion for  
Leave to  
Appeal.  
13th June  
1953—  
*continued.*

THE COURT DOTH ORDER that the said application be and the same is hereby dismissed with costs to be taxed and paid by the Appellants to the Respondents.

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RENE LEOTAUD,  
*Deputy Registrar.*

No. 10.

Order in Council granting Special Leave to Appeal.

AT THE COURT AT BUCKINGHAM PALACE.

The 28th day of October, 1953.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRIVY SEAL

MR. PEAKE.

SECRETARY SIR DAVID

SIR WALTER MONCKTON.

MAXWELL FYFE.

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In the Privy  
Council.  
—  
No. 10.  
Order in  
Council  
granting  
special  
Leave to  
Appeal.  
28th  
October  
1953.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 5th day of October, 1953, in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Port of Spain Corporation in the matter of an Appeal from the Supreme Court of Trinidad and Tobago (Appellate Jurisdiction) between the Petitioners (Appellants) and Gordon Grant & Company Limited (Respondents) setting forth (amongst other matters): that the Petitioners are the Rating Authority for the City of Port-of-Spain; that pursuant to section 93 of the Port-of-Spain Corporation Ordinance they caused a new valuation to be made of premises of which the Respondents are the owners for the triennial period 1951-3 in the amount of \$6,600: that on the 12th March 1951 the Respondents gave notice of objection

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In the Privy  
Council.

No. 10.  
Order in  
Council  
granting  
special  
Leave to  
Appeal.  
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1953—  
*continued.*

to the valuation: that on the 18th October 1951 the Petitioners confirmed the valuation: that the Respondents appealed to the Acting Chief Magistrate of the County of St. George West who on the 15th August 1952 made an order assessing the annual rateable value at \$5,760.00: that the Respondents appealed to the Full Court of the Supreme Court of Trinidad and Tobago which on the 30th April 1953 allowed the Appeal and substituted the figure of \$1,608 for the sum of \$5,760 fixed by the Magistrate: that the Petitioners applied to the Full Court for leave to appeal to Your Majesty in Council: that by Judgment of the Full Court dated the 13th June 1953 the application was refused: And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal against the Judgments of the Supreme Court of Trinidad and Tobago dated the 30th April 1953 and the 13th June 1953 or for further or other relief: 10

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof (no one appearing in opposition thereto) Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgments of the Supreme Court of Trinidad and Tobago dated the 30th day of April 1953 and the 13th day of June 1953 : 20

“ AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioners of the usual fees for the same.”

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. 30

Whereof the Governor or Officer administering the Government of the Colony of Trinidad and Tobago for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

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In the Privy Council.

No. 7 of 1954.

ON APPEAL FROM THE SUPREME COURT OF  
TRINIDAD AND TOBAGO  
(APPELLATE JURISDICTION)

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BETWEEN  
PORT OF SPAIN CORPORATION  
*Appellants*  
AND  
GORDON, GRANT & CO., LIMITED  
*Respondents.*

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RECORD OF PROCEEDINGS

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DRUCES & ATTLEE,  
82 King William Street,  
London, E.C.4,  
*Solicitors for Appellants.*

J. N. MASON & CO.,  
41-44 Temple Chambers,  
Temple Avenue, E.C.4,  
*Solicitors for the Respondents.*