[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]
(October 30, 1954)

ANTONIS THEORI HAJI ANTONI
OF AY. THEODOROS, *Appellant,*

v.

CLEOVOULOS HAJIDEMETRI
OF AY. THEODOROS,

Respondent.

(*Civil Appeal No.* 4116)

Nuisance—Personal injury—Fall of stones from house to street—Proof of disrepair necessary.

The appellant was injured by stones which fell out of the upper storey of respondent's house which abutted over a public street. The appellant sued for nuisance.

Held by the trial Court and on appeal: The appellant's claim failed since he had not proved that the accident was due to the respondent's premises being in disrepair.

Wringe v. *Cohen*, 1939, 4 All E.R., 243 applied.

Appeal dismissed.

Appeal by plaintiff from the judgment of the District Court of Larnaca (Action No. 388/54).

K. Halil for appellant.

G. Achilles for respondent.

The judgment of the Court was delivered by:

HALLINAN, C.J.: In this case the appellant was injured by two stones which fell out of the balcony on the first storey of the respondent's house which abutted over a public street. The balcony was constructed with some stone slabs laid on three stone supports. These stone supports were built into the whole thickness of the wall which was 45 cms., and even the stone slabs were built into the wall for 15 cms. One of the stone supports suddenly gave way cracking at 2" from the wall, and one of the flat stones also broke away at 1" from the wall. There was no evidence when those cracks developed; so far as the evidence goes cracking may have occurred immediately before the stones fell down in the street below. The third witness for the respondent was a man of 68 years who had been a mason for about 46 years. He had supervised and taken part in the building of the balcony and had actually carved the stones himself. The stone used in the balcony had been specially brought from

a quarry whose stone was used for such purposes. He had constructed many balconies in his village at Kalavassos in a similar manner, and some of them had been standing for as long as 30 years.

In our opinion the trial Court was right in its finding that there was no sufficient evidence to establish the fact that the falling of the stones was due to the balcony being in a state of disrepair.

The appellant had rested his cause of action on nuisance and he relied on the case of *Terry* v. *Ashton*, 1876, 1 Q.B.D., 314, and on *Wringe* v. *Cohen*, 1939, 4 All England Law Reports, 243. The head note in Wringe's case concisely summarises the Law:

> " If, owing to want to repair, premises upon a highway become dangerous, and, therefore, a nuisance, and a passer-by or adjoining owner suffers damage by their collapse, the occupier, or the owner, if he has undertaken the duty of repair, is answerable, whether or not he knew, or ought to have known, of the danger. If the nuisance is created not by want of repair, but by the act of a trespasser or by a secret and unobservable process of nature, neither the occupier nor an owner responsible for repair is answerable, unless with knowledge or means of knowledge he allows the danger to continue ".

The very strict liability imposed on an owner or occupier by these cases of Terry and of Wringe only arises if the premises constitute a nuisance because of their state of disrepair. Since the appellant in this case failed to discharge the burden of proof which was on him to show that the accident was due to such a state of disrepair, he cannot succeed.

This appeal must therefore be dismissed with costs.