aware, no such application was made to this court and the appellant was allowed, by a majority order after he had concluded his argument on the third ground and after counsel on the other side had objected to that procedure, to serve on the other side an affidavit exhibiting the writ of summons and the statement of claim. To put it shortly, as Scrutton, L.J. said in *Nash* v. *Rochford R.D.C.* (2) ([1917] 1 K.B. at 393; 116 L.T. at 132)—

> ". . . if you are to allow parties who have been beaten in a case to come to the Court and say 'Now let us have another try; we have found some more evidence,' you will never finish litigation. . . ."

This court by its decisions acts as a guide to the Supreme Court and the members of the bar, and it would in my opinion be setting a dangerous precedent if a litigant defeated in the Supreme Court could come to this court and adduce fresh evidence without having first obtained the leave of this court to do so.

For these reasons I would dismiss the appeal.

Appeal allowed.

TAYLOR *v.* WHITE CROSS INSURANCE COMPANY LIMITED

SUPREME COURT (Cole, Ag. C.J.): January 25th, 1966
(Civil Case No. 300/62)

[1] **Insurance — property insurance — partial loss — insurers of building liable for cost of making it as good as before:** The true measure of damages in an action against insurers for the cost of reinstating a building which has been damaged but not destroyed is the cost of effecting the repairs necessary to make the building as good as it was before (page 366, lines 5–8).

The plaintiff brought an action against the defendant company claiming special and general damages.

The plaintiff insured a building with the defendant company. The roof was blown off and some damage was done to other parts of the building. A dispute having arisen as to the payment of the plaintiff's claim under the policy, the plaintiff brought this action claiming the expenses of reinstating the building as special damages. He also claimed general damages. In the present proceedings the court was concerned only with the assessment of damages.

C. N. Rogers-Wright for the plaintiff;
Candappa for the defendants.

COLE, Ag. C.J.:

On May 17th, 1965, when I gave judgment in favour of the plaintiff in this case, I ordered that the question of the assessment of the quantum of damages due to the plaintiff be referred to the Master and Registrar for determination and that this action should come up again before me for further consideration after such determination. On May 28th, 1965, upon application being made on behalf of the defendants I granted them leave to appeal against my judgment of May 17th, 1965. On November 18th, 1965, the Court of Appeal directed as follows:

> "It is by consent ordered that the learned trial judge himself assess the damages and make a final order after such determination. Accordingly that part of the learned judge's judgment which reads—'This question I shall refer to the Master and Registrar for determination and I so order' is hereby set aside."

In pursuance of this direction I now proceed to consider the question of the assessment of the damages due to the plaintiff.

The plaintiff claims special damages and general damages. His special damages total £6,091. 7s. 11d. made up as follows:

"1. To materials: C.I. sheets, cement and nails, sandstone boards, sand, granite, syenite, glass and windows	£3,240. 0. 0.
2. To amount paid to Freetown Fire Force for salvage debris	15. 15. 0.
3. To amount paid to C.F.C.	197. 11. 3.
4. To labour	2,038. 1. 8.
	£5,491. 7. 11.

Further the plaintiff must yet incur expenditure as follows:

Materials ...	£200. 0. 0.
Labour	400. 0. 0.
	£600. 0. 0."

As regards the first item, materials, for which the plaintiff claims £3,240 (now Le6,480), the plaintiff relies on a summary he prepared

out of the records he kept (Exhibit D). These records were not produced. No invoices of any sort were produced nor was any evidence, apart from that of the plaintiff, called to support any of the items shown in Exhibit D. One thing, however, that is clear on the evidence is that some work on the reinstatement of the roof was done and according to the defence witness, Mr. Bernard Alexander Rawlings, the plaintiff was to buy the materials required for the reinstatement of the roof. My main difficulty in the state of the evidence is to determine what to award under this head. It was the main roof of the building insured with the defendants for £74,000 (Le148,000) which was completely blown off and which had to be reinstated. Also some damage was caused to the front portion of the lower roof and to the operating theatre. Although there is no evidence as to the size of the building or the dimensions of the roof I think it is reasonable to assume from the fact that the defendant agreed to insure the building in the sum of £74,000 that the building must be one of substance. I have carefully scrutinised Exhibit D. Some of the items shown therein in my view bear no relation to the acquisition of materials for the reinstatement of the roof. To say the least, it is a document on which it would be unjustifiable by any standard for me to rely. Taking all the circumstances into consideration I think it would be just if I allow the plaintiff Le3,600 under this head and I so do.

Turning to the second item, this has not been proved and I do not allow it. As regards the third item I find abundant evidence in support and I therefore allow it.

I now come to the fourth item, namely £2,038. 1s. 8d. for labour. This is exclusive of the third item. In support of this head the plaintiff relies on Exhibits F and L. These do not show a satisfactory state of accounting. They contain quite a number of erasures and alterations on such material points as dates and also quite a number of duplications. I find them most unreliable. Again, acting on the principle of what is just and reasonable in the circumstances, I award the plaintiff Le1,500 under this head.

As regards the last two items relating to further expenditure, the evidence of the defence witness Mr. Rawlings was that when his company stopped work there was a considerable amount of work to be done in connection with the reinstatement of the roof. That was about July 3rd, 1962. According to this witness there was left about 20 per cent. of the total costs of the work to be done. In those circumstances, I allow the plaintiff under these heads Le400 for

materials and Le500 for labour. I wish to add that in arriving at all these figures I gave careful consideration to the evidence of Mr. Rawlings. He undertook the work at the outset on a friendly basis without any estimate. His estimate of £1,500 (Le3,000) I consider too much on the conservative side and I reject it. I have also borne in mind the principle that the true measure of damages in a case of this nature is the cost of effecting the repairs necessary to make the building as good as it was before.

As regards the claim for general damages, I find no evidence before me of general losses or loss of use of the building. There is evidence however that the building was being used as a nursing home at the time the damage occurred and that it was during the rainy season that the building got damaged, which damage was to the main roof. In those circumstances sitting as a jury I consider myself justified in awarding the plaintiff something under this head and I award him Le300.

In the result there will be final judgment for the plaintiff for Le6,695.15 made up as follows:—

Materials	Le3,600.00
Amount paid to C.F.C.	395.15
Labour	1,500.00
Total costs of work to be done	900.00
General damages	300.00
	Le6,695.15

The plaintiff will have the costs of the action, such costs to be taxed.

Order accordingly.