

Province of Ontario.

HIGH COURT OF JUSTICE.

Meredith, C.J., Rose, J., MacMahon, J.]

[Feb. 7.]

CHURCH WARDENS OF ST. MARGARET CHURCH *v.* STEPHENS.

Church—Week-day services—Band at adjacent rink—Ordinary user of property by services—Non-natural user by band—Injunction.

In an action by the church wardens and trustees of a church, wherein week-day services were held, to restrain the playing of a band in an adjoining skating rink, which had the effect of disturbing the services.

Held, that the use by the plaintiffs of the church in that way was an ordinary reasonable and lawful use of their property, and the inconvenience to them and the congregation was such as to materially interfere with the use and enjoyment of it, and that the defendant's use of their property was not a natural and ordinary one, but a non-natural and extraordinary, though apart from the question of nuisance not an unlawful one.

Per ROSE, J.—Even had the plaintiffs not complained to the former proprietors of the rink that would be no legal answer on the part of the defendants.

Judgment of Meredith, J., affirmed, though slightly varied.

McCarthy, Q.C., and A. McLean Macdonell, for the appeal. Beck, contra.

Armour, C.J., Falconbridge, J., Street, J.]

[Feb. 7.]

ARMSTRONG *v.* HARRISON.

Deed to trustees of temperance society—Construction—Estate taken—Intention—Locality of habitation—New trustee—Appointment—Injunction.

A. by deed granted certain land to B. C. & D., trustees in trust for (three temperance societies) and their successors representatives of the aforesaid or the representatives of the societies of any temperance society by whatever name . . . known or designated. Together with all . . . the estate, right, title . . . of him his heirs and assigns. . . . To have and to hold . . . unto the said parties . . . and their successors in trust for said societies. . . .

Held, that B. C. and D. took only a life estate for their joint lives and the life of the survivor of them leaving the reversion in fee in the grantor.

Held, also, looking at the situation of the premises and the uses for which they were intended and that the temperance societies originally named were all formed in a certain town that the trust was intended to be confined to temperance societies having the same local habitation.

Held, also, that the plaintiff R. having been appointed a trustee for such a society although no such appointment could extend or prolong the life estate granted was entitled to restrain the defendant, his co-trustee and the sole surviving trustee under the deed, from pulling down a building on the premises. Judgment of the County Court of Halton reversed.

H. S. Osler, for the appeal. Bicknell, contra.