

No. 1. A tacit waiver could hardly go farther than an express one—and the grantor may yet take steps to enforce No. 6.

The work of the applicant-corporation having to do with healing, it was argued that in the building to be erected it would be carrying on the trade or calling of a physician within the meaning of restriction 4. If that were so, however, the church-building would not be a private dwelling house; and it was obvious that by "physician" was meant a duly qualified physician under the laws of the Province.

The restrictive covenants in the two Rudd deeds were enforceable by Dods against the applicant-corporation, and the erection of a church-building by the corporation would be a breach of those covenants which Dods could enforce by injunction.

Order declaring accordingly; the respondents' costs of the application to be paid by the applicant.

KELLY, J.

JULY 17TH, 1920.

RUDD v. TOWN OF ARNPRIOR.

*Municipal Corporations—Negligence—Sewage and Drainage System—Throwing Water on Lands of Plaintiff—Street-crossings Preventing Surface-water Flowing into River—Catch-basins Allowed to Become Choked—Right of Action—Remedy by Arbitration to Fix Compensation—Time-limit for Bringing Action—Municipal Act, secs. 331, 460—Limitations Act—Damages—Evidence—Quantum—Reference—Costs.*

Action against the town corporation for damages and an injunction in respect of injury to the plaintiff's land and buildings in the town by water caused to flow thereon by reason of the negligence of the defendants, as the plaintiff alleged.

The action was tried without a jury at Ottawa.

J. A. Hutcheson, K.C., and R. J. Slattey, for the plaintiff.

A. E. Fripp, K.C., and J. E. Thompson, for the defendants.

KELLY, J., in a written judgment, said that the plaintiff's land and buildings were on the east side of John street; that street in early days was crossed by a gully extending through the plaintiff's property to the Madawaska river. In its natural state, considerable water flowed through the gully and discharged into the river. Then this flow was interfered with by the gradual filling-in of the gully with earth and refuse. A pavement and