

MIDDLETON, J.

JUNE 29TH, 1915.

*RE LUTHERAN CHURCH OF HAMILTON.

Church—Conveyance of Land to Trustees for—Appointment of New Trustees—Power of Trustees to Mortgage Land—Religious Institutions Act, R.S.O. 1914 ch. 186, secs. 7, 8, 16 (1), (2), 18—Trustee Act.

Motion by the trustees of the church for an order declaring that they had been duly appointed, and that, under the Religious Institutions Act, R.S.O. 1914 ch. 286, they had authority to mortgage lands held in trust for the Trinity Evangelical English Lutheran Church of Hamilton; or for an order under the Trustee Act appointing the applicants trustees and vesting the property in them.

The application was heard in the Weekly Court at Toronto. Kirwan Martin, for the applicants.

MIDDLETON, J., said that on the 31st December, 1909, the land in question was conveyed to six persons described as "the trustees of the Trinity Evangelical English Lutheran Church of Hamilton." The trustees took the property as joint tenants, and not as tenants in common; but the conveyance did not define the trust nor make any provision for the appointment of new trustees. The church authorities wished to erect a new building, and for that purpose to raise money upon a mortgage. The trustees were not formally appointed as such by the congregation or otherwise, but at the time of the conveyance to them they held office as deacons in the church, and four of them were still deacons. At a meeting of the congregation on the 16th June, 1915, a by-law was passed providing that the deacons should not be regarded as trustees; and at another meeting on the 22nd June, 1915, after due notice, a resolution was passed approving and confirming the appointment of the six original trustees, confirming the appointment of two new trustees, and providing a mode of appointing successors to trustees hereafter.

The Religious Institutions Act appeared to be intended to enable difficulties such as those now arising to be satisfactorily solved without special legislation; referring to secs. 7, 8, 16 (1), (2), 18. All technical requirements of the Act as to notices of meetings and so forth having been complied with, the congre-