spruce boards of double height and banked outside with frozen snow and earth. It is not possible in Ottawa for a private person to flood a rink area himself; he must first procure a permit from the engineer's office, and, after he has paid $3 for it, the engineer sends men to turn on the water. Mr. Jenkins, acting for the Bible class, took out the permit in his own name "for permission to flood rink at First Baptist Church"—and gave directions to flood the rink 5 inches. That depth would have been perfectly safe: but the city employees were not satisfied to flood 5 inches—they flooded 20 inches, thereby causing the overflow.

Under such circumstances, it would be hard to find ground for making the Bible class liable: but in any event, I am unable to see how the trustees can be held.

The law of owner and occupier of land, upon which something is done which causes damage has been considered by the Court of Appeal in Earl v. Reid (1911), 23 O.L.R. 453. It may be thus stated. The owner of land is not liable for anything done thereon in the way of a nuisance (not by himself) if the land is in the control of another as tenant or occupier, unless such tenant or occupier is his agent expressly or by implication, or the agreement with such tenant or occupier contemplates the creation of the nuisance. "The fact that there is a possibility, even a manifest possibility, that the work would be done in such a way as to do harm, cannot fix the landlord with liability:" 23 O.L.R. at p. 466. The cases are cited in the report of that case.

There can be no doubt that a rink could have been made with perfect safety upon the vacant lot, and that the act of the city corporation's employees was the real cause of the nuisance. The flooding not being in any sense the act of these appellants, they were not called upon to do anything in the way of making the sidewalk safe, etc., even if they could lawfully have interfered with the condition in which the city corporation, through its employees, had put it.

I think that there is no difficulty arising from the fact that the Bible class is not an incorporated body—much law is to be found in the various reports of the long litigated case Metallic Roofing Co. of Canada v. Local Union No. 30 Amalgamated Sheet Metal Workers' International Association, in our Courts. See (1905) 9 O.L.R. 171.

The appeal should, in my view, be allowed with costs and the action dismissed with costs.