

## PROPERTY RESTRICTION ALMOST BARRED A CHURCH

Fourth Universalist Society Has to Go to Court for Permission to Build  
JUSTICE GRANTS THE ORDER  
Effort to Prevent an Objectionable Building Worked in a Peculiar Way

A livery stable instead of a church was very nearly built on a valuable corner in an exclusive part of the Stuyvesant Heights section on account of the very restriction that had been placed upon a lot there to protect the neighborhood from flat houses [prob. means apartment buildings], business offices or other objectionable institutions. Justice White, in the trial term of the Supreme Court, issued an order today making it possible to build the church.

It was a peculiar instance of a restriction providing for exclusiveness and then defeating its own object. It took liberal contributions on the part of the residents of the vicinity and a friendly spirit on the part of the trustees holding the restriction to make sure of the church.

The order issued by Judge White removed the restriction, so that the church can be built and the neighborhood will be free of all fear of a livery stable or a saloon. Two lawyers appeared in court to oppose the order, but they did not argue against a church. On the part of certain heirs holding a contingent interest in the proceeds of the estate whose trustees hold the restriction, they urged that the church should be compelled to pay a good price for the removal of the restriction.

The property in question consists of three lots on Stuyvesant avenue, on the corner of Madison street. These lots were, up to two years ago, part of the trust estate left by James Gardner, of Poughkeepsie. Adjoining these three vacant lots are three lots on which are dwelling houses, also a part of the Gardner estate. In his will Mr. Gardner provided for protecting the three dwellings by putting a restriction on the twenty foot lot adjoining the first of the dwelling houses. Two other vacant lots on the corner were not restricted. The will simply provided that the purchaser of the lot next [to] the dwellings should agree to erect nothing thereon except a one family, three-story dwelling of a certain type.

Two years ago [Adon?] F. Henton and Kate M. Guthrie, of Poughkeepsie, executors and trustees of the Gardner estate, sold the three vacant lots to Caroline B. Held, of Brooklyn, for \$8,250. Mrs. Held's husband announced that he was going to build a livery stable on the two corner lots upon which there was no restriction. The residents of the neighborhood knew that the Fourth Universalist Society of Brooklyn wanted a site for their church building and they encouraged the society to buy the Gardner property. The church agreed to pay something over \$12,000 for the three lots. Later the church trustees made a new bargain, by which they paid only \$11,000 for the lots, with the understanding that one lot was restricted against the building of anything but a dwelling house. They proposed to the trustees of the Gardner estate to build a church costing not less than \$20,000, the building to be on a line with the Gardner houses, and that portion of the church built on the restricted lot to be not over 55 feet high and to

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be used only for church purposes. The estate trustees agreed to consent to a removal of the restriction for the nominal consideration of \$1.

Then there came objections from some of the heirs of James Gardner. Not one of his blood relatives had any direct interest in the trust estate, it having been created by Mr. Gardner with the direction that the income from the houses should be paid to Josephine Hancock Gardner of Elmira, a girl he had raised and who is now 28 years old, with the further provision that at her death the property was to be sold and half of it given to her issue, if any there should be, and the other half to the nephews and nieces of the deceased Gardner: Charles DeAngelis, Gideon DeAngelis, Ada DeAngelis, Carrie Viola Franks and Laura E. Carrick. By these terms the nephews and nieces could have no interest in the estate until after the death of Josephine Gardner and the sale of the property.

Nevertheless, Laura E. Carrick employed Lawyer William Foster to appear in court and oppose the removal of the restriction on the lot that had already been sold by the trustees. Lawyer Foster argued the case to-day and urged that the church be made to pay some substantial sum to have the restriction removed. Frank Sparks appeared to make the same plea for the infant heirs of the Gardner estate.

Forrest S. Chilton, representing the church and also the trustees of the Gardner estate, argued that there could be no better protection of the Gardner houses than to have a church built on the adjoining lots. Justice White took this view and issued the order.

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Transcribed on 11 Sep 2009 by Karen E. Dau of Rochester, NY