

## INDEX.

### *Fairview Development Company Case.*

	PAGE
Notice of Appeal .....	1
Grounds of Appeal From Judgment of Supreme Court of Certiorari .....	2
Opinion of Supreme Court .....	8
Writ of Certiorari .....	13
Allocatur .....	13
Return .....	14
Stipulation as to Testimony for Both Cases ..	15
Reasons .....	179

### *Fairview Heights Cemetery Company Case.*

Notice of Appeal .....	4
Grounds of Appeal From Judgment of Supreme Court of Certiorari .....	5
Opinion of Supreme Court .....	8
Writ of Certiorari .....	16
Allocatur .....	16
Return .....	17
Stipulation as to Testimony for Both Cases ..	18
Reasons .....	181

### *Fairview Development Co. Testimony.*

#### FOR PROSECUTOR:

Rutherford H. Walker,	
Direct .....	21
Cross .....	29
Re-direct .....	47
Re-cross .....	48
Recalled, direct .....	50

	PAGE
Charles Singer, Jr.,	
Direct .....	62
Cross .....	71
James Nolan,	
Direct .....	76
Cross .....	85
Re-direct .....	89
Re-cross .....	90
Harry G. Smith,	
Direct .....	92
Cross .....	101

FOR DEFENDANT:

Harlan W. Short,	
Direct .....	108
Cross as to Qualifica- tions .....	109
Direct, resumed .....	110

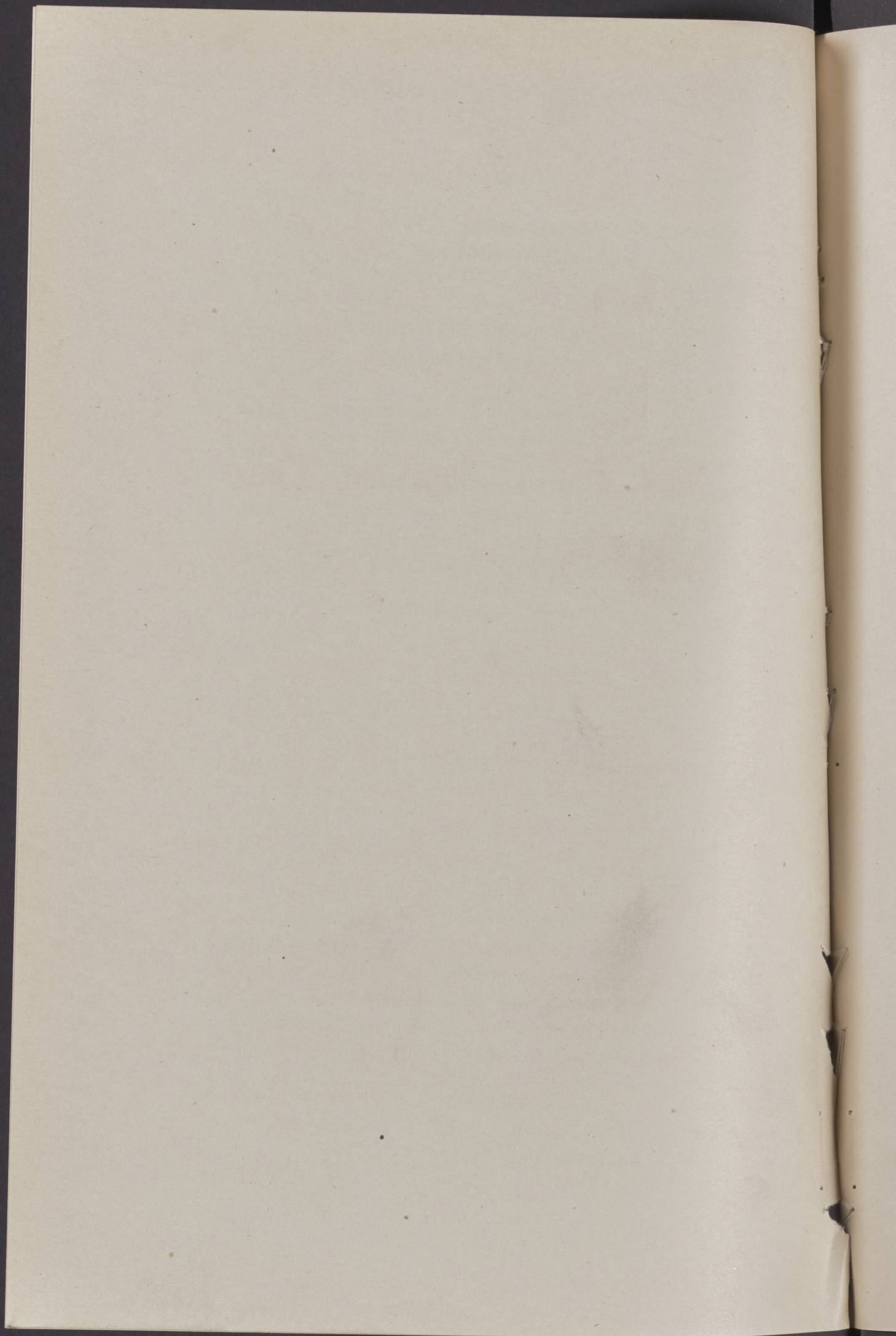
*Fairview Heights Cemetery Co. Testimony.*

FOR PROSECUTOR:

Charles Singer, Jr.,	
Direct .....	114
Cross .....	120
Re-direct .....	129
Recalled, direct .....	133
Harry G. Smith,	
Direct .....	130
Cross .....	132
Rutherford H. Walker,	
Direct .....	134
Cross .....	136
Recalled, direct .....	139
Recalled, cross .....	139
Recalled, re-direct .....	153

## EXHIBITS :

	Off. Folio	Ptd. Page
Certificate of Incorporation of Fair- view Development Company...		159
Offer of Fairview Heights Cemetery Co. ....		161
Exhibit P-1—Certification of Incor- poration of Fairview Cemetery Company .....	23	165
Exhibit P-2—Deed, Fairview Ceme- tery Co. to Fairview Development Co. ....	25	170
Exhibit P-3—Agreement Between De- velopment Co. and Cemetery Co.	25	170
Exhibit P-4—Certificate of Incorpo- ration of Fairview Heights Ceme- tery Co. ....	29	174
Stipulation .....		184



**Notice of Appeal.**

10

(Filed Sept. 6, 1917.)

**New Jersey Supreme Court**

FAIRVIEW DEVELOPMENT COM-  
PANY,  
Prosecutor-Appellant,

vs.

THOMAS FAY, Collector of the  
Borough of Fairview, in the  
County of Bergen, New Jersey,  
Defendant-Respondent.

Action  
at Law.

20

To Edwards & Smith, Esqs.,  
Attorneys for Defendant-Respondent.

30

Sirs:

PLEASE TAKE NOTICE, that the appellant,  
Fairview Development Company, appeals to the  
Court of Errors and Appeals in the last resort of  
all causes in New Jersey, from the whole of the  
judgment rendered in this cause.

WELLER & LICHTENSTEIN,  
Attorneys for Prosecutor-Appellant.

40

**Grounds of Appeal from Judgment of  
Supreme Court on Certiorari.**

(Filed Sept. 6, 1917.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

---

FAIRVIEW DEVELOPMENT COM-  
PANY,  
Prosecutor-Appellant,

vs.

THOMAS FAY, Collector of the  
Borough of Fairview, in the  
County of Bergen, New Jersey,  
Defendant-Respondent.

---

20

The appellant states the following grounds of appeal:

1. Because the assessment so made is upon cemetery lands and property in which interments had been and are still being made, and which said lands were dedicated to the purposes of a cemetery, and had been and are actually being used for  
30 cemetery purposes and for cemetery purposes only, and therefore are exempt from taxation under and by virtue of the laws of the State of New Jersey.

2. Because all of the land and property of said Fairview Development Company is exempt from all public taxes, rates and assessments, by reason of the formation and incorporation of said company, and the acquisition and holding of its land and property under and by virtue of an act of the  
40 Legislature of the State of New Jersey, entitled

*Grounds of Appeal from Judgment of Supreme Court on Certiorari.*

"An act to authorize the incorporation of rural cemetery associations and regulate cemeteries (Revision 1877)," and the acts supplementary thereto and amendatory thereof.

3. Because the Mayor and Council, and the Board of Health of said Borough of Fairview, prior to the location of said cemetery lands so assessed, gave and granted their consent and approval to said Fairview Development Company for the locating and establishing of such cemetery or burying grounds; which consent and approval have remained in full force and effect since the time of the granting thereof. 10

4. Because the said Fairview Development Company has in all things complied with the various acts of the Legislature of the State of New Jersey for the purpose of using said lands and property for cemetery purposes. 20

5. Because there was no evidence before the said Bergen County Board of Taxation which sustains or justifies the judgment of the New Jersey Supreme Court.

6. Because the New Jersey Supreme Court affirmed the judgment of the Bergen County Board of Taxation although it was error in so doing. 30

7. Because the Bergen County Board of Taxation and the New Jersey Supreme Court affirmed said assessment of taxes, whereas the same should have been set aside, annulled and cancelled,

8. Because said assessment of taxes is for some or all the reasons above stated, and for other reasons, wrongful, erroneous, unconstitutional and illegal. 40

WELLER & LICHTENSTEIN,  
Attorneys for Appellant.

*Notice of Appeal.*

Due service of a copy of the within Grounds of Appeal is hereby acknowledged, and we consent that the same be filed as of time.

EDWARDS & SMITH,  
Attorneys for Defendant-Respondent.

10

**Notice of Appeal.**

(Filed Sept. 6, 1917.)

NEW JERSEY SUPREME COURT.

20

FAIRVIEW HEIGHTS CEMETERY  
COMPANY,  
Prosecutor-Appellant,

vs.

THOMAS FAY, Collector of the  
Borough of Fairview, in the  
County of Bergen, New Jersey,  
Defendant-Respondent.

Action  
at Law.

30

To Edwards & Smith, Esqs.,  
Attorneys for Defendant-Respondent.

Sirs:

PLEASE TAKE NOTICE, that the appellant, Fairview Heights Cemetery Company, appeals to the Court of Errors and Appeals in the last resort of all causes in New Jersey, from the whole of the judgment rendered in this cause.

40

WELLER & LICHTENSTEIN,  
Attorneys ofr Prosecutor-Appellant.

**Grounds of Appeal from Judgment of  
Supreme Court on Certiorari.**

(Filed Sept. 6, 1917.)

**NEW JERSEY COURT OF ERRORS AND  
APPEALS.**

FAIRVIEW HEIGHTS CEMETERY  
COMPANY,  
Prosecutor-Appellant,

vs.

THOMAS FAY, Collector of the  
Borough of Fairview, in the  
County of Bergen, New Jersey,  
Defendant-Respondent.

10

20

The appellant states the following grounds of appeal:

1. Because the assessment so made is upon cemetery lands and property in which interments had been and are still being made, and which said lands were dedicated to the purposes of a cemetery, and had been and are actually being used for cemetery purposes and for cemetery purposes only, and therefore are exempt from taxation under and by virtue of the laws of the State of New Jersey. 30

2. Because all of the land and property of said Fairview Heights Cemetery Company is exempt from all public taxes, rates and assessments by reason of the formation and incorporation of said company, and the acquisition and holding of its land and property under and by virtue of an act of the Legislature of the State of New Jersey, en- 40

*Grounds of Appeal from Judgment of Supreme Court on Certiorari.*

titled "An act to authorize the incorporation of rural cemetery associations and regulate cemeteries (Revision 1877)" and the acts supplementary thereto and amendatory thereof.

- 10     3. Because the Mayor and Council, and the Board of Health of said Borough of Fairview, prior to the location of said cemetery lands so assessed, gave and granted their consent and approval to said Fairview Heights Cemetery Company for the locating and establishing of such cemetery or burying grounds; which consent and approval have remained in full force and effect since the time of the granting thereof.
- 20     4. Because the said Fairview Heights Cemetery Company has in all things complied with the various acts of the Legislature of the State of New Jersey for the purpose of using said lands and property for cemetery purposes.
5. Because there was no evidence before the said Bergen County Board of Taxation which sustains or justifies the judgment of the New Jersey Supreme Court.
- 30     6. Because the New Jersey Supreme Court affirmed the judgment of the Bergen County Board of Taxation although it was error in so doing.
7. Because said judgment of the Bergen County Board of Taxation and New Jersey Supreme Court affirmed said assessment of taxes, whereas the same should have been set aside, annulled and cancelled.

*Grounds of Appeal from Judgment of Supreme  
Court on Certiorari.*

8. Because said assessment of taxes is for some or all the reasons above stated, and for other reasons, wrongful, erroneous, unconstitutional and illegal.

WELLER & LICHTENSTEIN, 10  
Attorneys for Appellant.

Due service of a copy of the within Grounds of Appeal is hereby acknowledged, and we consent that the same be filed as of time.

EDWARDS & SMITH,  
Attorneys for Defendant-Respondent.

20

30

40

**Opinion of Supreme Court.**

(Filed June 6, 1917.)

NEW JERSEY SUPREME COURT,

FEBRUARY TERM—1917.

10

FAIRVIEW DEVELOPMENT COM-  
PANY,

Prosecutor,

vs.

THOMAS FAY, Collector, etc.,  
Defendant.

20

FAIRVIEW HEIGHTS CEMETERY  
COMPANY,

Prosecutor,

vs.

THOMAS FAY, Collector, etc.,  
Defendant.

Argued February Term, 1917. Decided June Term, 1917.

30 Two writs of certiorari, removing assessments and taxes by the Borough of Fairview, in the County of Bergen.

Weller & Lichtenstein, for Prosecutors.

Edwards & Smith, for Defendant.

Argued before Justices Swayze, Minturn and Kalisch.

The opinion of the Court was delivered by Minturn, J.

40 Two cases involving a claim of exemption from taxation are presented by these writs. In the first instance the Borough of Fairview in Bergen

*Opinion of Supreme Court.*

County, levied a tax on the assessed value of the property of the Fairview Heights Cemetery Company, comprising about fifty acres, for the year 1913.

The prosecutor is organized under the cemetery act (C. S., page 370) and owns and manages a cemetery comprising about sixty-five acres, fifty acres of which are not in use for cemetery purposes. The undeveloped section remains practically in its natural state. It was assessed and is taxed by the Borough, from which assessment the prosecutor appealed to the County Board, which Board sustained the assessment and tax. The insistence of the prosecutor is that the entire tract in use and out of use is exempt from taxation. 10

The cemetery acts have frequently been before this court, in various aspects of litigation, and from the views expressed as the result of those adjudications, the following principles may be gleaned. The fundamental rule pervading all exemptions from the general tax burdens of the State, is that they are not favored by the law, and will not be construed to exist unless the statute invoked to support them, expresses the legislative intention in clear and unmistakable terms. 20

Mausoleum Builders vs. State Board etc., 96 Atl., 494. 30

Cooper Hospital vs. Camden, 41 Vr., 478.

Rosedale Cemetery Co. vs. Linden, 73 L., 421.

In enacting legislation of this general character whose main and fundamental purpose is the protection under proper management of the bodies of the dead, it is not reasonable to assume that the power conceded by the legislature to cemetery associations, for that purpose, is so comprehensive in scope, as to enable them to purchase tracts of terri- 40

*Opinion of Supreme Court.*

tory, and to hold them unimproved and undeveloped for any purpose, out of the taxable assets of Township, County and State assessments.

10 If such a construction of this legislation were to be admitted, there would appear to be no limit to the bounds of the ownership of the corporation, within the terms prescribed in the act, except the financial carrying capacity of the corporation itself, and the following case involving a claim for exemption upon this ground will enable one to perceive how even that protective limitation may be evaded in actual practice.

20 The mere organization of a company, under the cemetery acts, and the purchase of land thereafter, without expenditure to improve or develop it, but the mere passive holding of the land, as it were by a species of mortmain, is not enough to bring the claim for exemption within the language and spirit of this legislation.

Ownership and use seem to be the legislative tests upon which an exemption from taxation of this character may legally be based. Section 4 of the Rural Cemetery Act expressly provides, that any portion of a cemetery "not actually set apart and used for burial purposes, shall be subject to taxation" etc. (Rev. 1877, page 1396).

30 In 1883 this section was amended by a proviso reading that any portion of the property of any such company "not actually set apart and used for burial purposes, shall be subject to taxation, etc." L. 1883, page 123.

The amendment of 1889 made no change in this feature of the legislation (P. L. 1889, page 418).

40 These various enactments are in *pari materia*, and must be considered together as presenting a cohesive and consistent legislative scheme declaratory of a state policy of setting aside, by a separate

*Opinion of Supreme Court.*

species of tenure, through corporate agencies, sections of land, free from taxation, when such lands are actually in use, or within reasonable contemplation of being used for the purpose declared, in the statute.

- Mt. Pleasant Cemetery vs. Newark, 98 10  
 Atl., 448.  
 Rosedale Cemetery vs. Linden (supra).  
 Mausoleum Builders vs. State Board, 100  
 Atl., 236.

The locus in quo in this controversy, presents no indicia of actual use or of reasonably contemplated use, within the statutory purview, which will enable us to bring it within such a classification, and the tax in question should therefore be affirmed.

The second writ removes an assessment and tax, upon twenty-six acres of undeveloped land, situated on the Bergen Turnpike and owned by the Fairview Development Company, a corporation not organized under the cemetery acts, but organized for business purposes under the general corporation act. 20

It obtained title to the locus in quo in 1910, by a conveyance from the Fairview Cemetery Company, for one dollar and other valuable considerations; and thereafter an agreement was executed between the parties to the deed setting out the true consideration of the conveyance (\$360,000), and a covenant was entered into with the Cemetery Company, that the latter company might sell burial plots from the land conveyed, upon certain prescribed terms, as to price and conditions. In effect the instrument constitutes a holding agreement, by which the title to the locus in quo is vested in the Development Company, subject to certain uses; the covenant being in all formal essentials not unlike the common law covenant to stand seized to uses 30 40

*Opinion of Supreme Court.*

(4 Kent's Com., page 492); the purpose apparently being to vest in the development company, in trust, such lands as the cemetery company could not legally hold by reason of the limitation contained in the cemetery acts.

10 The land in question is part of forty acres lying west of the Bergen Turnpike, and eleven acres of Meadow land lying on the east side thereof. Nothing has been done to improve or develop this acreage, for cemetery uses; and it lies in its natural state, impressed with a cemetery use only, so far as the trust expressed in the agreement may impose that character of user upon it.

20 The situation thus presented in principle, is not unlike that presented in the case of Mt. Pleasant Cemetery vs. Newark, 98 Atl., 448, and the recent case of Mausoleum Builders, etc. vs. State Board, 100 Atl., 236.

30 We do not deem it necessary to determine the power of a company, formed under the general corporation act, for general business purposes, to exercise the power and claim the privileges expressly conferred by exceptional legislation upon a distinctive species of corporation, created for the purpose of performing a quasi public function, and existing specially for the purpose therein prescribed, and for no other; nor do we deem it necessary to determine the further inquiry mooted in the briefs of counsel, whether in such a situation the lands in question can be properly considered as being held for cemetery uses, within the meaning and purview of the cemetery legislation.

40 It must suffice, to declare as we have done, in the previous instance, and for the reasons there advanced, that the locus in quo was not at the time of the imposition of this tax, devoted to and in use for cemetery purposes, and for that reason this tax also must be affirmed.

*Fairview Development Company Case.***Writ of Certiorari.**

(Dated December 11, 1915.)

NEW JERSEY, ss.: THE STATE OF NEW JERSEY,  
 To Thomas Flay, Esquire, Col-  
 lector of the Borough of Fair-  
 (L. S.) view, in the County of Bergen, 10  
 GREETING:

We being willing, for certain reasons, to be cer-  
 tified of an assessment of taxes made against the  
 Fairview Development Company for the year  
 one thousand nine hundred and thirteen, by the  
 Assessor of Taxes of the said Borough of Fair-  
 view.

We do command you, that the said assessment  
 of taxes so made by the Assessor of Taxes, together 20  
 with all things touching and concerning the same,  
 as fully and entirely as before you they remain,  
 to our Justices of the Supreme Court of Judica-  
 ture, at Trenton, on the third Tuesday of Febru-  
 ary, next, you certify and send, together with this  
 writ, that therein may be done what of right and  
 according to the laws of this State should be  
 done.

WITNESS, William S. Gummere, Esquire, Chief  
 Justice of our Supreme Court, at Trenton this 30  
 eleventh day of December, A. D. 1915.

WILLIAM C. GEBHARDT,  
 Clerk.

WELLER & LICHTENSTEIN,  
 Attorneys.

**Allocatur.**

I will allow this writ which is not to act as a stay  
 of sale which is to be held on December 15, 1915.

Dated, December 14, 1915. 40

CHARLES J. PARKER,  
 J. S. C.

*Fairview Development Company Case.***Return.**

To the Honorable the Justices of the Supreme  
Court of Judicature of New Jersey:

10 I, Thomas Fay, Collector of Taxes in the Bor-  
ough of Fairview, in the County of Bergen, in obe-  
dience to the command of the writ hereto annexed,  
to me directed, do hereby certify and send to you,  
the said Justices, the assessment of taxes made  
against Fairview Development Company for the  
year nineteen hundred and thirteen by Harry G.  
Smith, who was the assessor of taxes of the said  
Borough of Fairview, with all things touching and  
concerning the same, as fully and entirely as the  
20 same remains in my hands and possession, as by  
the said writ I am commanded, as appears by the  
schedule hereunder written.

IN WITNESS WHEREOF I have hereunto set my  
hand and seal this eleventh day of October, A. D.  
nineteen hundred and sixteen.

THOMAS FAY,  
Collector.

30 FAIRVIEW DEVELOPMENT COMPANY  
Taxes for 1913.

Acres	32.2	
Value of real estate...		\$193,400
Value of buildings....	2,000	
		<hr/>
Total .....		\$195,400

*Fairview Development Company Case.*

Rate of Tax.

State School .....	.24	
County Tax .....	.45	
Borough and local School purposes .....	1.56	
County Poor .....	.005	10
District Court .....	.005	
<hr/>		
Total .....	2.26 per \$100	\$4416.04

The value of the lands and improvements was reduced to the sum of \$50,000 by the Bergen County Board of Taxation.

**Stipulation.**

NEW JERSEY SUPREME COURT. 20

FAIRVIEW DEVELOPMENT COM- PANY, Prosecutor, vs. THOMAS FAY, Collector of Bor- ough of Fairview, Bergen County, N. J., Defendant.	On Certiorari. Taxes of 1913.	30
---	--	----

It is hereby stipulated and agreed that the following testimony, taken before the Bergen County Board of Taxation on the appeal of the Fairview Development Company from assessment of taxes for the year 1913, shall be considered and be taken to be the testimony in these proceedings.

WELLER & LICHTENSTEIN,  
 Attorneys for Prosecutor. 40  
 EDWARDS & SMITH,  
 Attorneys for Defendants.

*Fairview Heights Cemetery Company Case.***Writ of Certiorari.**

(Dated December 11, 1915.)

NEW JERSEY, ss.: THE STATE OF NEW JERSEY,  
 To Thomas Fay, Esquire, Col-  
 lector of the Borough of Fair-  
 view, in the County of Bergen,  
 GREETING:

10

(L. S.)

We being willing, for certain reasons, to be certified of an assessment of taxes made against the Fairview Heights Cemetery Company for the year one thousand nine hundred and thirteen, by the Assessor of Taxes of the said Borough of Fairview,

We do command you that the said assessment of taxes so made by the Assessor of Taxes, together with all things touching and concerning the same, as fully and entirely as before you they remain, to our Justices of the Supreme Court of Judicature, at Trenton, on the third Tuesday of February next, you certify and send, together with this writ, that therein may be done what of right and according to the laws of this State should be done.

WITNESS, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this eleventh day of December, A. D. 1915.

WILLIAM C. GEBHARDT,  
 Clerk.

WELLER & LICHTENSTEIN,  
 Attorneys.

**Allocatur.**

I allow this writ, which is not to act as a stay of sale which is to be held on December 15, 1915.

Dated, December 14, 1915.

CHARLES J. PARKER,  
 J. S. C.

40

*Fairview Heights Cemetery Company Case.*

**Return.**

To the Honorable, the Justices of the Supreme Court of Judicature of New Jersey:

I, Thomas Fay, Collector of Taxes in the Borough of Fairview, in the County of Bergen, in obedience to the command of the writ hereto annexed, to me directed, do hereby certify and send to you, the said justices, the assessment of taxes made against Fairview Heights Cemetery Company for the year nineteen hundred and thirteen by Harry G. Smith, who was the assessor of taxes of the said Borough of Fairview, with all things touching and concerning the same, as fully and entirely as the same remains in my hands and possession, as by the said writ I am commanded, as appears by the schedule hereunder written. 10 20

IN WITNESS WHEREOF, I have hereunto set my hand and seal this eleventh day of October, A. D., nineteen hundred and sixteen.

THOMAS FAY,  
Collector.

FAIRVIEW HEIGHTS CEMETERY COMPANY.

Tax for 1913.

Acres	52.8		30
\$316,500 Value of real estate.			
Rate of Tax.			
State School	.....	.24	
County Tax	.....	.45	
Borough and local School purposes	.....	1.56	
County Poor	.....	.005	
District Court	.....	.005	
Total		..... 2.26 per \$100.	\$7,152.90 40
Value of land reduced by County Board of Taxation to the sum of \$50,000.			

*Fairview Heights Cemetery Company Case.***Stipulation.**

## NEW JERSEY SUPREME COURT.

10	FAIRVIEW HEIGHTS CEMETERY COMPANY, Prosecutor, vs. THOMAS FAY, Collector of Bor- ough of Fairview, Bergen County, N. J., Defendant.	On Certiorari, Taxes of 1913.
----	--	--

20 It is hereby stipulated and agreed that the following testimony, taken before the Bergen County Board of Taxation on the appeal of the Fairview Heights Cemetery Company from assessment of taxes for the year 1913 shall be considered and be taken to be testimony in these proceedings.

WELLER & LICHTENSTEIN,  
 Attorneys for Prosecutor.

30

EDWARDS & SMITH,  
 Attorneys for Defendants.

40

**Testimony.**

COUNTY COURT HOUSE, HACKENSACK, N. J.  
Thursday, January 22, 1914, 2 P. M.

In the Matter

of

THE FAIRVIEW DEVELOPMENT  
COMPANY, for the Reduction or  
Cancellation of the Tax Assess-  
ment for the Year 1913, on its  
Property, situate in the Bor-  
ough of Fairview, County of  
Bergen, State of New Jersey.

On Appeal.

10

20

Transcript of the official stenographic report of  
the testimony and proceedings, had before the  
Bergen County Board of Taxation, composed of

Hon. Henry D. Winton, President,  
Mr. William Conklin,  
Mr. Edwin F. Carpenter, and  
Mr. Van Vorst Wells, Secretary,

held at the County Court House in Hackensack,  
New Jersey, at the rooms of the Board, on Thurs-  
day, January 22, 1914, at two o'clock in the after-  
noon.

30

APPEARANCES:

JULIUS LICHTENSTEIN, Esq., for the Fairview  
Development Co. and The Fairview Heights  
Cemetery Company.

ALEX H. G. MAIDMENT, Esq., and HERMAN A.  
BERG, Esq., for the Borough of Fairview.

40

*Colloquy.*

Pres. Winton: Now, gentlemen, we are ready to go ahead with this case, if you are prepared. We will take up first the Fairview Development Company. They are separate appeals.

10 Mr. Lichtenstein: I represent the Cemetery Company and also the Development Company. The petition is that we appeal not only from the valuation of the property but also claim that the property is exempt from taxation, on the theory that it is cemetery lands.

Pres. Winton: In other words, if this Board should find that it was not exempt then the question of valuation would be a question for consideration?

20 Mr. Lichtenstein: Yes, sir. We are presenting both questions. I understood that this Board was desirous of having that question determined—as to whether lands of this kind are really exempt from taxation. I understood there was really quite some agitation in the county and that it was quite an important question, and that you gentlemen wanted that matter settled once for all.

Pres. Winton: That is not only true in this county but true in the entire State.

30 Mr. Lichtenstein: That is so, I understand. So that, if it shall be determined that the lands are not exempt from taxation, we desire to present proof to show that the value of the lands is far less than the amount which has been placed upon them for taxation purposes. I will call Mr. Rutherford H. Walker.

*Rutherford H. Walker—Direct.*

RUTHERFORD H. WALKER, being first duly sworn, testified as follows:

Direct Examination by Mr. Lichtenstein:

Q. Mr. Walker, you are connected with the Fairview Development Company, are you? A. Yes, sir.

Q. And what position do you hold with the company? A. Secretary and Treasurer. 10

Q. How long have you held those positions? A. Since its incorporation.

Q. When was the company incorporated? A. October, 1910.

Q. And you are also connected with the Fairview Cemetery Company? A. Yes, sir.

Q. What position do you hold with that company? A. Treasurer.

Q. What is your regular occupation, Mr. Walker; what business do you do? A. Relative to the cemetery? 20

Q. No, other than that. A. Oh, real estate.

Q. And do you buy and sell real estate? A. Yes, sir.

Q. And you have been engaged in that business how many years? A. Fifteen.

Q. And doing business in Bergen and Hudson counties? A. Yes, sir.

Mr. Maidment: We will admit that Mr. Walker is an expert in real estate matters. 30

Q. And are you familiar with the location of the lands the title of which is now in the Fairview Development Company? A. That is to say, the unsold lands?

Q. The unsold lands, yes, the title of which is now in the Fairview Development Company and from the assessment of which you are now appealing? Are all of these lands which are assessed used for cemetery purposes? A. They are laid 40

*Rutherford H. Walker—Direct.*

out for cemetery purposes; we are not using them at all now. They are laid out, though.

Q. When the property was purchased first and when you applied for your franchise was it intended that this property should be used for cemetery purposes?

10

Mr. Maidment: One moment; I object to that. You should produce the certificate of incorporation, to show for what purpose it was incorporated.

Q. Yes—have you a copy of that?

Mr. Maidment: That is, the development company.

20

Mr. Lichtenstein: You understand there are three companies.

Mr. Maidment: I understand. The only thing I object to is this: This is a direct appeal from the assessment levied against the Fairview Development Company and that is the only thing that ought to come up at this time.

Mr. Lichtenstein: That is all I intend to prove.

30

Mr. Maidment: Then what bearing would this have?

Mr. Lichtenstein: I want to show that this is cemetery lands and show the evolution of the title and how it became cemetery lands.

Mr. Maidment: You mean, the lands that belong to the development company now are owned by some cemetery corporation?

40

Mr. Lichtenstein: I claim that these are lands that belong to the cemetery and are used for cemetery purposes. It is my intention to keep them separate. I offer in evidence Certificate of Incorporation of the

*Rutherford H. Walker—Direct.*

Fairview Cemetery Company, dated January 15, 1901, and recorded January 15, 1901.

The same is marked Exhibit P-1.

Q. After the incorporation of the Fairview Cemetery Company the franchise that was obtained was obtained for the lands which is the subject matter of this appeal, was it not? 10

Mr. Maidment: I object to that. That is a matter that should be proved by resolution on record to that effect, not proved verbally. I think the best evidence ought to be produced.

Q. As I understand it, Mr. Walker, the lands which are the subject of this assessment are the same lands, excepting such as have already been sold for actual interments, which the Fairview Cemetery Company owned when it applied for its charter? A. Exactly, originally. 20

Q. And these lands are the same lands which passed from the Cemetery Company to the Development Company, which is the appellant in this matter? A. Yes, sir.

Q. As soon as the Development Company was organized and obtained its franchise did it start in to make interments in this land? A. The Fairview Development Company? 30

Q. No, the Fairview Cemetery Company? A. Oh, yes.

Q. And has the Fairview Cemetery Company continued to make interments in this land? A. Yes.

Q. And that has continued up to the present time? A. Yes, sir.

Q. Have there been hundreds and thousands of interments? A. Oh, we have got over 6,000 interments. 40

*Rutherford H. Walker—Direct.*

Q. And have all of these lands, which is the subject matter of this appeal, ever been used for any other purposes except for burial purposes since the organization of the Cemetery Company? A. No.

10 Q. Now, after the organization of the Development Company have interments been made in this land by the Cemetery Company? A. Yes.

Q. And has been continued up to the present day? A. Yes.

Q. And are all the interments made by the Cemetery Company? A. Yes.

Q. And has the Cemetery Company exclusive charge of the interments? A. Yes, sir.

Q. Has the Development Company itself ever made any interments there? A. No.

20 Q. Have those lands always, from the time of the organization of the Cemetery Company, been devoted to cemetery purposes? A. Yes, sir.

Q. And for any other purposes? A. No.

Q. And are these lands which are the subject matter of this assessment the cemetery lands of the appellant? A. Yes, sir.

30 Mr. Maidment: I object to that, as to whether they are the cemetery lands or not. That is a matter for record title. Do you mean to say that the Cemetery Company owns the land now?

Mr. Lichtenstein: Oh, yes, I think we will agree upon that.

Q. Mr. Walker, have you got a copy of the deed? A. I think I have. (Witness produces deed.)

40 Mr. Lichtenstein: I offer in evidence the original deed from the Fairview Cemetery Company to the Fairview Development Company, the appellant in this case, dated Oc-

*Rutherford H. Walker—Direct.*

tober 1, 1910, and recorded in the office of the Register of this County (Bergen County) on the 15th of December, 1910, in Book 769 of Deeds, page 670.

The same is marked Exhibit P-2.

Mr. Maidment: You admit then, that the title is in the Fairview Development Com- 10  
pany at the present time?

Mr. Lichtenstein: Why, we admit that the record title of the properties which have not been disposed of so far for interments—where no interment has been made—is in the Development Company. I offer in evidence an Agreement, dated the 8th of December, 1910, entered into between the Fairview De- 20  
velopment Company and the Fairview Cemetery Company. I have a copy here which can be used and both the original and the copy can be marked.

The same is marked Exhibit P-3.

Q. Mr. Walker, these lands as soon as they were acquired by the Cemetery Company and up to the present time have been dedicated for cemetery purposes? A. Yes, sir.

Q. And have they been dedicated to use for any other purposes, from the time they were first pur- 30  
chased by the Cemetery Company up to the present time? A. No.

Mr. Maidment: We can admit all that. All lands that have been purchased from the Development Company by the Cemetery Company have been turned over for cemetery purposes for the burial of the dead.

Q. Since the papers which have been offered in evidence here between the Cemetery Company and the Development Company were executed did the Cemetery Company continue to make inter- 40  
ments? A. Yes.

*Rutherford H. Walker—Direct.*

Q. And continues to do that up to the present time? A. Yes.

10 Q. Has any part of this land, at any time, been used for any other purpose excepting for the burial of the dead? A. No. I will make one correction: Excepting a small portion that we are using for a hot-house. Of course, we use that for our own benefit.

Q. (By Mr. Maidment.) How large is that, Mr. Walker? A. Oh, that is a small piece.

Q. Probably six or seven lots? A. Oh, no, it doesn't cover one lot.

Q. When you say "one lot" you mean a lot 25 x 100? A. Yes.

20 Q. And this hot-house is used for what purposes, for the purpose of raising plants, and keeping plants for the purpose of embellishing that cemetery? A. Yes.

Q. And that is all that it is used for? A. Excepting the old house that is used there by our watchman.

Q. And that is necessary in the proper care and management and embellishment of the cemetery to have that there? A. Yes.

30 Q. Now, take up the question of the value of these lands.

Mr. Lichtenstein: You have already admitted his qualifications?

Mr. Maidment: He is an expert on real estate matters.

Q. You are perfectly familiar with the lands which is the subject matter of this appeal, Mr. Walker? A. Yes.

40 Q. What, in your opinion, from your past experience, is the value of this land per acre? A. Oh, it averages about \$800.

*Rutherford H. Walker—Direct.*

Q. Will you just describe to the gentlemen of this Board the general character and the nature of this land? A. Why, commencing down at the Turnpike you run into several hundred feet until you strike a lot of rock; that of itself would be no good for development of cemetery purposes, only for vaults. As a real estate proposition I wouldn't consider it worth anything above the figure I have quoted. 10

Q. (By Mr. Maidment.) About how many acres is that that you say runs up against the rocks? A. Oh, that possibly may contain fifteen acres. Then, it adjoins the Susquehanna tunnel and the smoke nuisance would kill it, anyway, for real estate development.

Q. (By Mr. Conklin.) You say the land, as a whole, is worth about \$800 per acre? A. Yes, that is what I would consider a reasonable figure. 20

Q. How many acres? A. We have got on the east side of that, not sold, about 26 acres.

Q. You say that the tunnel which exists there is a detriment to the use of the property for certain purposes? A. Yes.

Q. And does the tunnel run beneath this land? A. Yes, and has its opening there right on the Turnpike.

Q. And in the use of this tunnel is smoke emitted? A. Yes, sir. 30

Q. And in what way does that affect the usefulness of this property? A. That would kill any development.

Q. From your experience could this property be used, located as it is right at the mouth of this tunnel, for development purposes? A. At the mouth of this tunnel? No, because it is all rock. It is not only rocky, but it is hilly. You couldn't utilize it for anything; it is dead land. We can't even use it for cemetery purposes. 40

*Rutherford H. Walker—Direct.*

Q. You can't even use it for that purpose? A. No.

Q. How much land is there that you can't use even for cemetery purposes as it lies now? A. Oh, at least an acre, if not more.

10 Q. Does it lie on the side of the hill? A. Yes.

Q. And could it be used for building purposes without going to a great deal of expense? A. No.

Q. For building purposes what would you say it was worth? A. Acreage.

Q. Yes. A. For that particular piece we are talking about?

Q. No, I mean taking the whole thing as a whole and averaging it. A. Well, \$750, as I said.

20 Q. So that for any purposes you would say it was worth no more than \$750 an acre? A. Yes.

Q. Prior to the purchase of this land by the Cemetery Company do you recall what the assessment on it was? A. No, I don't.

Mr. Maidment: I object to that.

Mr. Lichtenstein: That would be improper, but I want to follow it up and find out what development there is in the neighborhood and find out whether it has increased in value.

30 A. I can't answer that.

Q. I show you a map entitled "Map of Fairview Cemetery," and I ask you whether upon this map there is indicated the course of the railroad and where the mouth of the railroad is? A. Yes.

Q. Is it this blank space which appears right in the center of the land? A. Yes.

40 Q. Is it just as it appears here from the Bergen Turnpike to where it is indicated? A. I don't know whether that is a fact or not; I never measured it; but they run back a considerable distance.

*Rutherford H. Walker—Cross.*

Q. Do you understand that the mouth of the tunnel is inside some of your land, as extended on the sides? A. Yes, to a considerable distance.

Map referred to is marked Exhibit P-4 for identification.

10

Cross Examination by Mr. Maidment :

Q. Mr. Walker, in the affidavit that you filed here in the Fairview Development Company you stated the land wasn't worth over \$40,000; is that correct? A. That is true.

Q. And what did you base that figure on—what number of acres? A. On that land. We have about twenty-six acres—no, I beg pardon, on the 32 acres.

20

Q. Did you read the affidavit before you signed it? A. Yes, sir.

Q. Were you acquainted with the contents of it? A. Yes, sir.

Q. Did you notice the part there "32.2 acres of land" set forth in the annexed bill? A. Yes.

Q. And that is what you base the \$40,000 upon? A. Yes.

Q. Which would make the value of the land, then, about \$1400 an acre, according to your sworn affidavit? A. Yes, sir.

30

Q. Then you were mistaken when you said the land was worth, in your opinion as an expert, \$800 an acre? A. At the time I signed it I didn't know there was so much rock around there.

Q. What did you do, guess at it, when you signed the affidavit? A. No, but I thought I knew better about it than I did.

Q. How much rock is there around there now than formerly to make this change from \$40,000? A. I said an acre awhile ago.

40

*Rutherford H. Walker—Cross.*

Q. Take \$800 off or \$700 off of that 32 acres; that would make a difference of seven or eight hundred dollars between the \$40,000 that you have sworn to in the petition and \$20,800 that you now testify to that the land is actually worth? A. How do you make \$20,800?

10 Q. Twenty-six acres. A. Thirty-two we are figuring on, pardon me.

Q. Well, on the basis of \$1400 an acre, on the 32.2 acres, it would make a difference of \$7,000, wouldn't it? A. Yes.

Q. Then when you based your valuation on the 32.2 acres—on the erroneous supposition that there were that number of acres there—you based it at the rate of \$1400 an acre—between thirteen and fourteen hundred dollars an acre? A. Yes.

20 Q. How was the value of the land changed per acre from the time you filed the petition to the present time? A. By looking at it.

Q. You are an officer of both companies? A. Yes, sir.

Q. How much of it has changed in value? A. Why, I gave the value at \$800 now. I have a tract of land at Fairview, much finer than that, that I cannot sell, you might say, at any figure. The land has decreased in value; it hasn't any value.

30 Q. The land you are speaking of now? A. Yes.

Q. It isn't laid out in lots, is it? A. No lots.

Q. Where is it, above the cemetery, east? A. Yes.

Q. What have you been asking for that, if it is for sale, per acre? A. I have been offering it at \$3,000 an acre.

Q. That is meadow land, isn't it? A. No, sir, wood land.

Q. Is any part of it wood land? A. No, sir.

40 Q. Is it east or west of the Dallytown Road?

A. East of the Bulls Ferry Road.

*Rutherford H. Walker—Cross.*

Q. Toward the meadow? A. No, there is no meadow there; it is on Kamena Avenue, if you know where that is.

Q. Have you sold any of it off in lots? A. No.

Q. Aren't there developments adjacent to it? A. Yes.

Q. What are they selling in there? A. \$350 with 10 streets.

Q. How many lots to the acre? A. Twelve.

Q. This property that you offered for \$3,000 an acre, that you say you can't get a bid for, is not laid out in lots, is it? A. It is not laid out, no; there are streets.

Q. How many streets? A. Kamena Avenue.

Q. That has not been a regularly dedicated street, has it? A. No.

Q. Just about the same character of land as this cemetery land? A. No, Kamena Street was laid out by my father. 20

Q. I say, it is the same character of land as the cemetery land? A. Only much finer land.

Q. What do you mean? A. Higher and drier and no rock.

Q. No improvements, like lanes and driveways? A. No.

Q. No curbing? A. No.

Q. Any sidewalks? A. No. 30

Q. No macadam? A. No.

Q. The cemetery has? A. No, this land that is not laid out hasn't any.

Q. Now, Mr. Walker, at the time the Fairview Cemetery Company bought this land what did they pay for it? A. The Fairview Cemetery Company?

Q. Yes.

Mr. Lichtenstein: That is objected to, on the ground that it is entirely immaterial 40

*Rutherford H. Walker—Cross.*

what they paid for it. The question before this Board is, what was the market value at the time of the assessment.

Mr. Maidment: If they bought it a few years ago, when land was cheaper, or at a certain price, we have a right to show that.

10

Pres. Winton: What this Board wants is proof of the value of the property on the 20th of May.

Q. It was in 1910 that this property was sold to the Development Company? A. Yes, October.

Q. Did the Cemetery Company give back any purchase-money mortgage?

20

Mr. Lichtenstein: I object to that. The Commissioners have already ruled that the test was the value as of the 20th of May, or about that time.

Mr. Maidment: I will call the Commissioners' attention to the fact that, under the agreement entered into and which is a part of the evidence, that you have agreed that you won't sell a square foot of that property for less than \$1.75 per square foot.

Mr. Lichtenstein: True, sir.

30

Mr. Maidment: Are you willing to take that as evidence of the value of the property?

Mr. Lichtenstein: That is not an evidence of value. The question is, what can property of that kind be purchased for in that neighborhood, and what is the value of that place.

Q. What do you get for one burial plot?

40

Mr. Lichtenstein: I object to that as being immaterial. It isn't what they get for burial purposes. You gentlemen will understand that under the Cemetery Act we are

*Rutherford H. Walker—Cross.*

obliged to provide perpetual care fund—a fund which remains forever.

Mr. Maidment: I will withdraw the question.

Q. Have you provided, under the Cemetery Act, this perpetual care fund? A. Yes. 10

Q. By taking one-half the sales you have consummated? A. Yes. Not one-half; we pay fifty cents a square foot.

Q. That is not one-half, as required by the Act? A. No.

Q. Then you have not complied with the Act, so far as the perpetual fund is concerned? A. I don't know whether we ever got that amount.

Q. What is the amount of that perpetual fund there now, in the bank, invested in bonds, or mortgages, or any other securities that belong to either the Fairview Cemetery Company or the Development Company? 20

Mr. Lichtenstein: I object to that. We are not here to determine what their care fund is or how they have invested it, or what they have done with it. We are determining the question of the value of this land at the time of the assessment, and it seems to me that we should confine ourselves to that. 30

Q. How much did it cost this Cemetery Company to lay out the land into parks?

Mr. Lichtenstein: I don't know that they are laid out in parks.

Mr. Maidment: It is laid out in streets, avenues and lawns, and shrubbery set out.

A. I can't tell you that offhand. It cost a lot of money.

Q. That adds to the value of the land, doesn't it? A. Yes. 40

*Rutherford H. Walker—Cross.*

Q. What portion of the Development Company's property that is now rented is now, of record, laid out the same as the balance of the cemetery lands that are used for interments only? A. What do you mean by that, with paths, or trees and shrubbery?

10 Q. Laid out with lawns, trees, paths, roads and streets, and water pipes. A. There are about twenty acres still to be laid out.

Q. I didn't ask you that; how much has been laid out? A. There are eleven acres, about, laid out.

Q. Eleven acres now laid out the title of which is in the Fairview Development Company? A. Yes, sir.

20 Q. What was the cost of laying out those eleven acres of land? A. I can't tell that.

Q. Have you got the books of the company here? A. No. The Cemetery lays that out, not the Development Company.

Q. The Development Company owns it? A. Yes, the Development Company sells to the Cemetery.

30 Q. Do you mean to say that the Cemetery uses its funds for the purpose of laying out the Development Company's lands when there are two distinct corporations? Do you mean to say that? I am trying to get the correct facts and that question requires a yes or no answer.

Mr. Conklin: How does that interest this Board? We don't care what they use this land for? The question is, whether this land is assessable, and if so, what its value was on the 20th day of May, 1913.

40 Pres. Winton: How many acres are being used?

Mr. Maidment: Eleven acres.

*Rutherford H. Walker—Cross.*

Q. (By Pres. Winton.) The tract originally was 32 acres? A. No, that was what it was originally assessed. We had forty acres on the east side and we have sold fourteen acres and we have about twenty-six left.

Q. How many have you got on the other side of the turnpike? A. Eleven acres of meadow land. 10

Q. Thirty-five acres all together? A. Yes.

Q. And that is all of the land included in this petition, from which you are appealing? A. Yes.

Q. And 32.2, as mentioned in the petition? A. Yes.

Mr. Maidment: I would ask the Board now to amend the assessment at the proper time, on the basis of 35 acres instead of 32.2.

Mr. Conklin: I think, Mr. Maidment, you want to ask now what the meadow land is worth, so that we can get a price on it. 20

Q. What is the meadow land worth there, Mr. Walker? A. Why, we purchased some further south at \$80 an acre.

Q. What do you mean, on the other side of the railroad track? A. No, I mean down at North Bergen.

Q. Does a good portion of this meadow land front on the turnpike? A. Yes. 30

Q. This other land that you could purchase for \$80 an acre doesn't front on the turnpike? A. No, by the railroad.

Q. There was no turnpike frontage to it? A. No.

Q. Now, what do you consider the meadow land worth there that fronts on the turnpike? A. \$200 would be a good figure.

Q. \$200 an acre? A. Yes.

Q. Do you know what was the price that was 40

*Rutherford H. Walker—Cross.*

paid to Mr. Timm for the disposal plant there for the sewer? A. Do I know?

Q. Yes. A. No. That wouldn't be any criterion because they were rather extravagant.

Q. Who was rather extravagant? A. Council board.

10 Q. That is your opinion? A. Yes, and I am going to show that later on.

Q. When was the last time you sold any property around in that section, Mr. Walker? A. Any acreage?

Q. Yes. A. Not for a long while.

Q. How many years ago? A. I haven't sold any; my father sold some a few years ago.

Q. And was it near the cemetery at all? A. No.

20 Q. How far away? A. Why, there were 238 acres at North Bergen, I think it was, that was sold at a hundred dollars an acre.

Q. How many years ago was that? A. Last year.

Q. And you know Bergen is down in that lowland? A. Meadow land, by the railroad.

30 Q. But how long since you have bought or sold any land, not cemetery land, not for cemetery purposes, but land of the same character, within a radius of one mile? A. The only large tract that I acquired was for the Hudson Heights Realty Company.

Q. How many years ago was that? A. Seven years ago.

Mr. Lichtenstein: I object to that.

Q. You don't care to answer that? A. Mr. Lichtenstein has objected.

40 Mr. Lichtenstein: Oh, go on if you want to. It depends upon where the land is.

*Rutherford H. Walker—Cross.*

A. Why, it is a much finer piece of land. We paid \$2,000 an acre for it.

Q. You get \$20,000 an acre for this land when you sell it as acreage to other societies, don't you?

Mr. Lichtenstein: I object to that. It isn't a question of what they sell it for in burial plots. 10

Mr. Maidment: I wasn't talking about burial plots.

Mr. Lichtenstein: You say "sell it to societies."

Mr. Maidment: Not necessarily.

Q. Do you know of any sale that has taken place within a mile of the cemetery, or any acreage, after the Development Co. obtained title? A. Yes.

Q. Where? A. Right adjoining the Fairview Heights Cemetery. 20

Q. How many acres? A. Eight or nine.

Q. Do you know what it brought? A. Around seventeen or eighteen thousand.

Q. For eight or nine acres? A. Much finer land.

Q. What do you mean by "much finer land"? A. Higher.

Q. Higher up from the water, or what? A. 100 feet above the cemetery land.

Q. And how far is the cemetery land above the water? A. I don't know. 30

Q. It is all high land, isn't it? A. I mean for development purposes I am talking about now.

Q. Now, how much of a mortgage is on the property of the Fairview Development Company?

Mr. Lichtenstein: I object to that. The Commissioners have already ruled that that was something they were not concerned about. Mr. Maidment, you know yourself 40

*Rutherford H. Walker—Cross.*

you are foreclosing mortgages, and they are doing it all over New York City where there are deficiency judgments of thousands upon thousands of dollars,—property that is sold in the open market at public sale by the Sheriff.

10

Q. Isn't it a fact that to-day there is a mortgage of \$240,000 on this property?

Mr. Lichtenstein: I object to that.

Mr. Maidment: I insist upon the question being asked and I think it is fair. That ought to be a criterion to go by.

20

Pres. Winton: Mr. Maidment, I don't think this Board is interested in what the incumbrances are on the property; they are interested in knowing what this property worth—what this Development Company property is worth.

Q. Is there any of that property in the open market? A. No.

Q. And the only person that can purchase any of this property is the Fairview Cemetery Company? A. Yes, sir.

30

Mr. Conklin: I don't think this Board can deal in futures. It is what the property was worth on the 20th of May.

Q. Mr. Walker, on the 20th of May last your cemetery company was willing to pay at least 60% of \$1.75 per square foot for every square foot of land that you purchased from the Fairview Development Company?

40

Mr. Lichtenstein: I object to that. The Board has already ruled that whatever payments have been made has nothing to do with it.

Mr. Wells: If they were paying a certain

*Rutherford H. Walker—Cross.*

figure on the 20th day of May last would not that be evidence of the value of the property at that time?

Mr. Lichtenstein: If you gentlemen will remember there are a great many obligations on the part of the cemetery. A cemetery may be willing to pay an exorbitant figure for property for cemetery purposes, but you can't go by that and charge five or six or seven times the value of all the other property in the neighborhood. 10

Pres. Winton: I don't think, Mr. Maidment, that we can enter into that question as to the amount of the mortgage on it. A mortgage is not always evidence of true indebtedness. That is demonstrated every day. 20

## Cross Examination by Mr. Berg:

Q. Mr. Walker, how many lots have there been sold, if any, in that neighborhood to your knowledge, outside of the cemetery, within the last five years? A. Only what has been sold on our own tract.

Q. There hasn't been many lots sold up there?

A. No, sir.

Q. I guess the Fairview Cemetery Association has bought from the Fairview Development Company about as many lots as anybody around there? A. You are talking now about the same number of square feet? 30

Q. Yes. A. Yes, I guess they have.

Q. Now, during the year 1912 the cemetery companies have bought quite some land from the Development Company, hasn't it? A. Not so much.

Q. It has all been in lots, hasn't it, or plots? A. Plots.

Q. What is the average price per square foot 40

*Rutherford H. Walker—Cross.*

per plot that the Development Company has sold to the Cemetery Company?

10 Mr. Lichtenstein: I object to that. We have gone all over that and the Board, I think, has ruled on that. Prove the value of this land the same as any other land around in the neighborhood.

Mr. Berg: Well, I will introduce copies of these deeds as evidence and just ask on that. Does the Board allow us to go into these deeds—the value of the land as ascertained by these deeds—how much the land was sold for, how much area these deeds transfer, and the like of that?

20 Pres. Winton: Mr. Berg, I want to ask you a question: Supposing you are selling this land of the Development Company at \$1.75 a foot; that would bring the value of the acreage up into thousands and thousands of dollars, wouldn't it?

Mr. Berg: It would bring it up to about seventy to seventy-five thousand dollars.

Pres. Winton: Now, you are not contending that a value of that kind should be entertained by this Board?

30 Mr. Berg: No.

Pres. Winton: Now, is not a part of the value of this land to be taken into consideration when you realize that it must be maintained for all time? Does not that cut a figure in its value?

Mr. Berg: Not with a Development Company; it does with a cemetery.

40 Mr. Conklin: Now let me ask you a question, Mr. Berg: Your contention is that this land is the only land that has been sold during the past year in that vicinity, and it was sold at a valuation of \$1.75 per square foot.

*Rutherford H. Walker—Cross.*

If that is a criterion of what it should be assessed at don't you think that the same thing should hold good with reference to adjacent property?

Q. How much of this land has roads? Don't the roads run right through it to the turnpike? 10

A. No.

Q. Have you any roads going from Bulls Ferry Road, or from the cemetery office on it, to the turnpike? A. No. There's an apology for a road.

Q. That is in course of development now? A. Yes, but that isn't a fact.

Q. It is laid out now? A. Yes.

Q. And is being and will be next spring? A. It is just cut out.

Q. You have planted trees there and you have laid out this road, whoever it was, the Development Company or the Cemetery Company, I don't know which, for the purpose of using that for the cemetery, and as soon as it is completed you can go from Bulls Ferry Road right down to the Turnpike? A. Yes. 20

Examinatin by Mr. Maidment:

Q. What would the Fairview Development Co. take for all the property they have left to-day, at a rock-bottom figure? A. If you have got any cash come along and we will make it look sick. 30

Mr. Lichtenstein: I don't suppose Mr. Walker could answer that; that is something for the Board of Directors to say.

A. (continuing) Of course, I couldn't answer that.

Q. Who is the Fairview Development Company? Who are the officers and incorporators? A. William Gulden is President; I happen to be the Secretary and Treasurer. 40

*Rutherford H. Walker—Cross.*

Q. How many shares of stock does Mr. Gulden own?

Mr. Lichtenstein: Oh, does that make any difference?

10 Mr. Berg: I would like a ruling on my question. How much per square foot was paid the Development Company.

Pres. Winton: There is testimony that it was \$1.75.

Mr. Berg: Then it is admitted on the record that they pay \$1.75 per square foot?

Pres. Winton: It is admitted that they will not sell to anyone else except the Cemetery Company.

20 A. (continuing) 60% of \$1.75 is quite a difference.

Q. They sell for not less than \$1.75 and then take off 60% of that? A. Yes.

Q. And does the 40% or 60% go to the Development Company? A. 60%.

30 Q. (By Pres. Winton.) Where does the balance of it go? A. Why, on that basis we pay a commission of 15%, and we have to put aside 50 cents per square foot for maintenance which is perpetual. The interest on that money is supposed to keep the plot in order and pay for the maintenance of the cemetery.

Q. Does the 15% come out of the 40% or the 60%? A. The 40%.

Q. Nothing is taken out of the 60%? A. Interest on the bonds.

Q. They pay off the \$240,000 mortgage and the interest from that? A. We haven't yet.

Q. I mean you have assumed to do so? A. Yes.

40 Q. (By Pres. Winton.) Well, it is admitted that the Development Company received \$1.75 a square foot? A. No, sir; not in all cases; 60% of that.

*Rutherford H. Walker—Cross.*

Q. Then it is admitted that it receives 60% of \$1.75? A. A single grave we sell at \$1 per square foot.

Q. (By Mr. Lichtenstein.) And out of that a sinking fund is created for the purpose of paying off the bonded indebtedness, and interest has to be paid for the mortgage on the cemetery? A. The sinking fund comes out of the 60% and interest on the bonds first. 10

Q. (By Mr. Lichtenstein, continued.) And then its perpetual care fund has to be taken care of?

Mr. Berg: The perpetual care fund doesn't come out of the 60%.

A. No, out of the 40%.

Q. (By Mr. Berg.) Do you know what the lots opposite the cemetery on the Bulls Ferry Road are being sold for; take, for instance, the property of Mr. Luckhardt? A. No, I don't know. 20

Q. More than \$400 a lot, isn't it? A. On Bulls Ferry Road?

Q. Yes. A. Yes.

Q. What would you think the lots were fronting on the Bulls Ferry Road? A. Whereabouts?

Q. Right opposite the cemetery? A. It wouldn't be on the Bulls Ferry Road; it would be on the Dallytown. 30

Q. Yes. A. \$500 would be a big price. That is all rock. I don't know whether you gentlemen know that.

Q. It is worth \$500 in your estimation? A. Yes, and then you pay a commission on that.

Q. And that is for 25 x 100? A. Yes.

Q. Now, you own some acreage right opposite the cemetery, at the junction of the Dallytown Road and Bulls Ferry Road? A. Yes.

Q. What is that worth an acre there? A. That hillside stuff? 40

*Rutherford H. Walker—Cross.*

Q. The tract on the southeast corner? A. I said awhile ago in my testimony that we would be glad to sell it at \$3,000 an acre—all of that land.

Q. That is just opposite the cemetery? A. Yes.

10 Q. Now on the north of the cemetery, the property just below the cemetery, that is north of the cemetery, what is that land worth an acre, fronting on the Bulls Ferry Road? A. That hillside stuff?

Q. No, the west of it, the same side as the cemetery is on, not the rock on the hillside. A. Per acre?

Q. Yes, facing Bulls Ferry Road. A. A thousand dollars an acre. I don't know whether I would give a thousand dollars an acre.

20 Q. In your estimation, do you appraise the value of the land just north of the cemetery, facing and fronting on the Bulls Ferry Road at \$1,000 an acre? A. I didn't say that.

Q. What did you say? A. Did you say north or south?

Q. North. A. Right north of the cemetery?

Q. Yes. A. Yes, a thousand dollars an acre. Having a frontage on Bulls Ferry Road?

30 Q. Yes, and being on the westerly side of Bulls Ferry Road. A. Yes, that is, if it didn't run in to any extent, having that frontage, about a thousand dollars an acre.

Q. Do you know of any land on the Bulls Ferry Road in the last six years, within 500 feet north or south of the cemetery and on the same side as the cemetery that has been sold for one thousand dollars an acre or less? A. No.

40 Q. Do you know of any that has been sold for more? A. I quoted that for more, a tract of land I sold for sixteen or seventeen thousand, up on the hill.

*Rutherford H. Walker—Cross.*

Q. That is, on the Bulls Ferry Road? A. Yes.

Q. How far from the cemetery is that? A. Three blocks, or two blocks.

Q. And there are no improvements there either, are there? A. No.

Q. Now, take the land south of the cemetery and facing on the Dallytown Road, on the same side of the street as the cemetery is on, most of that is laid out in lots and plots? A. Part of it. The tract adjoining the cemetery is not laid out. 10

Q. Well, within, we will say, two or three hundred feet south from your cemetery—all that land is laid out, isn't it? A. There is laid out what we call the Bergen Wood Park section.

Q. That almost adjoins the cemetery, doesn't it? A. Yes, sir.

Q. What were lots selling for there? A. We were selling them for three or four hundred. 20

Q. No improvements? A. There is water in there and streets.

Q. Now, on the Bergen Pike, what is the land worth on the east side of the Bergen Pike, just adjacent to the cemetery on the north? There is very little acreage just north of the cemetery on the Bergen Pike? A. A few tracts.

Q. But most of it is small plots? A. I think so. 30

Q. What is land worth there an acre? A. Oh, about \$700.

Q. On the Bergen Pike? A. On the Bergen Pike. I said a thousand on Bulls Ferry Road, which is worth a little more money.

Q. Now, the land on Prospect Street—that is the street first north of the cemetery? A. Yes.

Q. And what are lots worth on that street? A. About \$300.

Q. \$300 a lot? A. Yes. 40

*Rutherford H. Walker—Cross.*

Q. (By Mr. Conklin.) Lots 25 x 100? A. Yes. It goes up Bulls Ferry Road and that is an awfully steep hill.

Q. \$12 a foot? A. Yes. That would be a good price.

10 Q. The back of these lots do adjoin the cemetery, don't they, a good many of them? A. No, Prospect Street is a thousand feet away at least.

Q. (By Mr. Conklin.) On Dallytown Road were they two or three hundred feet way that you sold for three or four hundred? A. I wouldn't put any price on the lots there; it was acreage. Bergen Wood Park, I said.

Q. Has the Fairview Development Company sold any property to anybody else except the Fairview Cemetery Company? A. Nobody.

20 Q. (By Pres. Winton.) You testified early in your testimony that the running of that tunnel there had affected the value of a certain number of acres of your property? A. Yes.

Q. Did your Cemetery Company, or the Development Company ever receive any compensation from the tunnel people? A. No, not the Development Company. I don't know whether the Cemetery Company did or not.

30 Q. (By Pres. Winton, continued) You look upon that as a damage? A. As a development. They were asking me to give them a value on the land and looking at that as a real estate transaction and not as a cemetery land, that would be considered a nuisance with smoke belching forth.

Q. Then that was a damage to your property? A. Yes.

Q. Were you not entitled to compensation, if that was the case? A. At that time we were.

*Rutherford R. Walker—Re-direct.*

Re-direct Examination by Mr. Lichtenstein:

Q. As I understand, then, Mr. Walker, the number of acres in which there are actual interments are about how many? A. About fourteen.

Q. And the balance is how many acres? A. Twenty-six on the east side of the Turnpike and eleven on the other side. If I may say a word, when I said \$800 an acre I included that meadow stuff which I said wasn't worth \$200. I averaged that and put that \$800. When I put the price at a thousand I didn't have that acreage in mind. 10

Q. And that is how you arrived at the conclusion in general figures, as stated in your petition? A. Yes.

Q. Now, the improvements that have been made on this land, such as putting the little lawns over the graves and between the graves,—is that of any value excepting for a graveyard? A. That is all. 20

Q. And that is all the improvement there is? A. Well, we do that for all. There is sentiment there. We are not all hardhearted citizens like the people on the other side.

Mr. Berg: I take exception to that. I'm sure we're not hardhearted.

Q. Could this cemetery land here which is the subject of this assessment be used at all for any practical purposes, in view of the fact that there is this railroad here and the tunnel belching out smoke all the time? A. Any particular part? 30

Q. Yes. A. Oh, yes; on the Dallytown Road it could.

Q. That is the front part? A. Yes.

Q. But wouldn't the smoke come there, too? A. You wouldn't get the smoke there because that is west of the tunnel, or southwest. 40

Q. So that it would interfere with the buildings

*Rutherford R. Walker—Re-direct.*

there? A. Yes. I might say that the land on the Turnpike would be a better development as a real estate proposition than the other, because you wouldn't get that smoke.

Q. Well, in fact, have the values of land increased there at all in the last six or seven years?

10 A. I can say on our own tract in the last six years they have not.

Q. And would that apply to this general locality? A. Yes.

Q. Now the Luckhardt property, is that the same kind of land as your land is, the cemetery land? A. No, that is nicer land.

Q. Is it to be classed with this land at all? A. No.

20 Q. And the land that you were asked about by Mr. Berg on the road, is that land that can be classed with your land at all? A. Some of it, yes.

Q. Is there any land in that immediate locality which is similarly situated as your land is and that is the same general character, that is worth any more than \$800 or \$1,000 an acre? A. No.

Q. I mean similar land? A. No, taking it all as a whole, I mean. We have that rocky stuff there that hasn't any value.

30 Q. Land that has hills and dales and projections and promontories? A. Yes.

Q. Lands that you have spoken of as being \$300 and \$500 a lot are different from your land, are they? A. That Lockhardt is better land.

## Re-cross Examination by Mr. Berg:

40 Q. This property known as the Luckhardt property, isn't the grade there a good deal steeper than your property in the cemetery? A. The Luckhardt property has this advantage, that it lies all over the cemetery.

*Rutherford H. Walker—Re-cross.*

Q. There is quite a steep incline there, isn't there? A. No.

Q. It is just opposite the cemetery, too? A. Yes.

Q. All you can see is this big cemetery? A. And the Hackensack Valley and the Orange Valley. 10

Q. And as a matter of fact it is all rock? A. Not all.

Q. The portion of it right opposite your cemetery is rock? A. Yes.

An adjournment is now taken to Friday, January 23, 1914, at ten o'clock in the forenoon, at the same place.

---

County Court House, Hackensack, N. J., 20  
Friday, January 23, 1914, 10 A. M.

The members of the Board met pursuant to adjournment.

All Counsel present as before.

Pres. Winton: Gentlemen, I want to make this statement: We will give you all the leeway you want in this case; in fact, we were allowing you to run all around it yesterday; but now let us get right squarely down to business, and the first thing I want to find out is this: I am not exactly clear as to the number of acres. This tax bill against the Development Company calls for 32.2 acres. Now, is that the correct acreage? 30

Mr. Maidment: If you will remember the testimony of Mr. Walker yesterday, it disclosed some other acreage there that would make it perhaps 35.

Pres. Winton: Then it should be 35 instead of 32.2? 40

*Rutherford H. Walker—Direct.*

Mr. Maidment: Yes, and I ask to amend the tax bill by adding the other two acres.

Mr. Lichtenstein: I think there are about two additional acres.

10 Pres. Winton: Then of that 11 acres have been sold for interments?

Mr. Lichtenstein: Mr. Walker will be able to give us the exact facts about that. I will ask him to take the stand.

RUTHERFORD H. WALKER resumes the stand for further examination.

Examination by Mr. Maidment:

20 Q. On the 11-acre proposition, as I understand your testimony, it was that the Development Company had improved eleven acres as cemetery property; is that correct? A. There are 11 acres of meadow land.

By Pres. Winton:

Q. I have a memorandum that eleven acres have been sold for interments? A. No, no; there are about fourteen sold for interments.

By Mr. Lichtenstein:

30 Q. That is, out of the 35? A. We had 40 originally.

Q. Eleven acres are meadow lands? A. Yes, sir.

Q. And fourteen acres have been actually sold for interment purposes? A. Yes, sir.

Q. And does that include the necessary lands for avenues and streets that are necessary in order to use it? A. Not altogether; some of it.

40 Q. Well, how many acres would you say are taken up for the roads leading to these cemeteries that are necessary for the maintenance of the cem-

*Rutherford H. Walker—Direct.*

every plots? A. Oh, that is a hard question to answer.

Q. About how many acres? 9. An acre, at least.

Mr. Maidment: Pardon me just a moment, to get this straight. As I understand it, there are fourteen acres for interments, but that is not actually fourteen acres where bodies are buried, but includes not only the spaces between the bodies, but the spaces for the bodies themselves and for the drive-ways. 10

Mr. Lichtenstein: Oh, no; he says exclusive of that.

The Witness: No, that includes some of the paths. 20

Q. (By Mr. Lichtenstein) How many acres all together are there that have actually been used for interments and for these little roads that are necessary for the maintenance of this cemetery? A. Fourteen acres.

By Mr. Berg:

Q. Now in the name of the Development Company? A. No, that is the Cemetery Company.

Pres. Winton: What we are after now is this: This tax bill here provides for the assessment of 32 acres against the Development Company; this Board wants to be in this position: It believes that the Development Company is not entitled to exemption and it wants to know exactly the amount of acreage it is entitled to and what that acreage is worth. 30

Mr. Maidment: And on that very point, Senator—the point that I tried to raise yesterday was that there should be an absolute divorce as between the Development Com- 40

*Rutherford H. Walker—Direct.*

10 pany (whether it is a holding company or not, it makes no difference) and the Cemetery Company, the record title being in the Development Company. Now, as I understand it, there are thirty-five acres that belong to the Development Company. These 11 acres and the 14 acres that they are speaking about used to belong to it, but it now belongs to the Cemetery Company that has sold it to lot holders.

Mr. Berg: Eleven acres is meadow land, fourteen acres are improved for cemetery purposes, and the balance is improved property.

By Mr. Lichtenstein:

20 Q. Mr. Walker, the total number of acres of land that the Cemetery Company had originally when it started business was how many acres? A. When they first applied, or all together?

Q. All together. A. About forty acres.

Q. Now, then, out of those forty acres— A. That doesn't include the meadow land; it is exclusive of the meadow land. There were about fifty acres all together.

30 Q. And out of the fifty acres, then, there were 11 acres of meadow land? A. Yes, sir.

Mr. Berg: What do you mean by eleven acres of meadow land?

Mr. Lichtenstein: He simply says there were eleven acres of meadow land.

Q. How many acres of upland were used for the purpose of interments? A. About fourteen, which left about twenty-six, as I said yesterday.

40 Q. So that it leaves about twenty-six acres of upland still held by the Development Company and eleven acres of meadow land? A. Yes. Of that twenty-six acres, gentlemen, a portion of it

*Rutherford H. Walker—Direct.*

is laid out in roads to get to this land, so that we have really less than twenty-six acres that we can use for interments.

Q. In order to get to your cemetery lands you have got to cross and use the Development Company's lands? A. Yes, we have got to use some of that land. 10

Q. And it is the meadow land you speak of as being worth about how much? A. I think I said \$200.

Q. Is that a fair and reasonable figure for that land? A. That is a good figure.

Q. And how much would you say the upland is worth? A. Yesterday I think I said \$800.

Q. And how much do you consider it to be actually worth? A. \$800. And, gentlemen, I would like to make an explanation of something that has worried me. I am in a peculiar position here. In addition to giving my own appraisal I am representing the trustees of the Fairview Cemetery Company and the Development Company and about a thousand plot owners whose interests I have got to look out for, so that I want to be fair with the plot owners and with the trustees and bondholders and the Fairview Borough. When I put that price of \$40,000 on there I told Mr. Lichtenstein, "Let's show the County Board that we are fair; let us put on \$40,000," knowing that the cemetery was exempt from taxation. 20 30

Q. So that when you put the figure of \$40,000 on you put the outside figure? A. Yes. If you recall, I said "Let's be fair with them"; those are the exact words I used.

Q. Now, Mr. Walker, since yesterday have you compiled some figures and a table as to the result of some of the plots that you were asked about by Mr. Berg, relative to the number of feet that would be sold and the price that the cemetery company received, and what the result would be? 40

*Rutherford H. Walker—Direct.*

Mr. Maidment: What is this, cemetery plots?

Mr. Lichtenstein: You asked Mr. Walker or Mr. Berg, did, about that, and you said you wanted to ascertain how much they were selling a foot of ground for.

10 Mr. Maidment: Whom do you mean by "they," the Development Company or the Cemetery Company?

Mr. Lichtenstein: The Development Company and the Cemetery.

Mr. Maidment: I should like to have the situation cleared up, but let us get down to business. We don't care anything about the Cemetery. My contention is that we must adhere to the Fairview Development Company and what they received in their recent sales, not the plot that they have sold to the Cemetery Company or any one else.

20 Mr. Lichtenstein: Through the cemetery company, which is the only customer we have ever had. Now then, as I stated to you gentlemen yesterday, that was no fair criterion of value and it isn't, and I don't contend that it is to-day; but you gentlemen must remember that under the Cemetery Act the cemeteries have the right to bond their properties for the purpose of paying the purchase price of the land. It may be an exorbitant figure what they paid for it

30 twelve years ago. It is necessary for the cemeteries to pay the bonded indebtedness and also to pay the income on that bonded indebtedness. This conveyance was made to the development company and under the agreement with the development company and the cemetery company certain moneys are received by the development company and certain moneys are retained by the

40

*Rutherford H. Walker—Direct.*

Cemetery Company, and I want to show by Mr. Walker that even at the rate they are receiving, under the statutes the bonds are exempt from taxation; that the moneys that are realized are not even sufficient to create a sinking fund for the redemption of those bonds and to pay the interest on the bonds, and to show the moneys that have to be retained for the purpose of embellishing the land and for the perpetual care of the graves. I don't want to go into a great deal of this matter unless you consider it material. 10

The Witness: Mr. Maidment laid stress on the fact that we were getting \$1.75 a square foot, which he considered was exorbitant. 20

Mr. Maidment: Whom do you mean by "we"?

Mr. Lichtenstein: The Board.

Mr. Maidment: Here is a man that says he represents now three different parties, and we want to know whom he means, the Cemetery Company or the development company.

The Witness: The Cemetery Company and the Development Company. If you will allow me to explain you will see what I am driving at, gentlemen. The contention of counsel is that the Development Company was incorporated purely and solely for pecuniary benefits. As a matter of fact, it was a benefit to the cemetery, which pulled them out of a hole. I have taken 1913 as a criterion. I have got the sales for the entire year if you want that. 30

Mr. Maidment: But when he says "we sold so much land" we want to know who is "we," the Development Company? 40

Mr. Lichtenstein: There can't be any

*Rutherford H. Walker—Direct.*

distinction; it is all one. It is the Cemetery Company that sells the land. When he says he sells, he means the Cemetery Company.

Mr. Maidment: Do you mean to argue that the Development Company is a Cemetery Company?

10

Mr. Lichtenstein: Yes.

Mr. Maidment: Your certificate of incorporation doesn't say so.

Mr. Lichtenstein: I don't care; it doesn't have to say that it is a Cemetery Company. Let us get the evidence in first and then we can discuss the questions of law afterwards.

Q. Now, go on, Mr. Walker. A. Gentlemen, I made up a list of plots, single graves, and the number of square feet sold during the year 1913, on which the Fairview Development Company gets 60% of the selling price when paid to the Fairview Cemetery Company. Now let me enlarge on that a little. The Cemetery Company sells plots in the cemetery 8x10 feet, or 80 square feet at \$1.75 per square foot for \$140. Some of those are not paid for in ten years, so that we don't always get that money, but there is no deed issued until the plot is fully paid for. The Development Company gets 60% of that money. Now, this is a list made up for the entire year 1913. During that year we sold forty-three plots, representing 5,573 square feet, fifty-nine \$15 graves and two hundred and twenty-two \$25 graves. The forty-three plots, representing 5,573 square feet realized \$11,000; fifty-nine \$15 graves containing 708 square feet realized \$708; and the two hundred and twenty-two \$25 graves, containing 5,328 square feet, realized \$4,440. That makes a total of 11,609 square feet, which sold for \$16,148, averaging \$1.39 per square foot.

40

Q. Now, what was done with the money? A.

*Rutherford H. Walker—Direct.*

The plot that sold for \$140 is divided this way: The trust fund gets 50¢ a square foot or \$40 a plot. That money is put into a trust fund and the interest on that is used to keep those plots in order seven months during the year. Now, you can figure that out, how much it takes; it is \$240 a year. Last year we spent about \$9,000 in the maintenance of that cemetery taking care of those plots, a whole lot more than the trust fund would warrant. We are more than liberal with the plot owners. So that, we put 50 cents aside for the trust fund, and the Development Company gets 60%. We pay 15% commission on \$140 which is \$21. Now, you take a plot 8x16, or 128 square feet at \$2 per square foot and it amounts to \$256. Of that the trust fund gets 50 cents a square foot, or \$64, and the Development Company get 60% which is \$153.60, and 15% commission is \$38.40, all of which totals \$256.00.

Q. And the result of your calculations is that relative to the first items that you gave us you sell a plot for \$140 and it costs you \$145? A. Yes, sir.

Q. And in the second instance you just get the amount that it costs? A. Yes, sir; to a cent. We have made up the figures I have given you so as to show the Board just how the matter stands. We want to be fair to the Development Company and pay the bonds or the interest on the bonds and if possible to put some money in a sinking fund to redeem those bonds, and we want to be fair with the trust fund and get sufficient interest to take care of the graves of the cemetery.

By Mr. Maidment:

Q. Isn't it a fact that the Cemetery Company received a certain stipend from each grave or plot owner for the care of the graves per year? A. No, sir.

*Rutherford H. Walker—Direct.*

Q. Have you got your books here? A. I haven't got the cemetery books.

Q. Who has them? A. I have them home.

Q. They are under your care? A. Yes, sir.

10 Mr. Lichtenstein: Let me say a word right here in regard to this matter. The question is a very important one, and one I think the Senator and the other members of the Board want cleared up: The question was asked me, why the land should be exempt from taxation under those circumstances. If you will bear in mind, under the Cemetery Act under which this cemetery was organized the cemetery was authorized to purchase land and to give bonds to secure the payment for that land in any way they saw fit, and this land was purchased under the Cemetery Act and these bonds were issued under the Cemetery Act, and under the Cemetery Act these bonds were exempt from taxation by express letter of the statute the same as all cemetery lands are exempt from taxation. Now, you can see the purpose of that was forever to keep sacred the graves of the dead, so that they couldn't be sold for taxes. The bonds were issued for the purpose of paying for this land, so that all of these moneys that we are speaking of now that are received as a result of the sale of the land are going now, first, to create this perpetual fund to take care of these graves forever. That is one fund. Secondly, to pay the interest on the obligations of the Cemetery Company, which were created according to law; and, third, to create, if they can, a sinking fund to redeem, or partially redeem, these bonds, so that absolutely every single

20

30

40

*Rutherford H. Walker—Direct.*

dollar that comes in from the sale of this land goes to pay the cemetery obligation. So that you can see that this Development Company is merely a sort of a convenient organization to take care of the liabilities and the assets of the cemetery association, with nothing going to the Development Company at all—all of it going to the cemetery association either directly or indirectly. 10

Mr. Maidment: In other words, it is a scheme to evade the cemetery law?

Mr. Lichtenstein: No, it is not a scheme to evade the cemetery law; it is a scheme to pay the obligations of the cemetery association, just as a cemetery association would be obliged to do if there was no development company at all. If we were to wipe out tomorrow the Development Company we could do it; there is no reason why we couldn't do it—no reason why this Development Company should not be disbanded, and, of course, if this property is subject to taxation it will be disbanded. It is merely a paper organization. It may be disbanded, and then what will be the result? The same result as exists to-day, the cemetery owning all this land, owning the same number of bonds and having the same outstanding obligations, the same interest charges, the same perpetual care fund and so forth, so that instead of the Development Company getting this 60% the Cemetery Association will retain it. 20 30

Pres. Winton: Then there are no bonds of the Development Company?

Mr. Lichtenstein: No, this is all; there is nothing else excepting the cemetery association obligations, and there isn't enough 40

*Rutherford H. Walker—Direct.*

10 money by any means and never will be, as these figures will show, to pay the obligations. If this land is sold at this high figure it will never be able to pay the obligations of the cemetery association. If all this land were sold to-day at \$1.75 per square foot there wouldn't be enough money to pay off the obligations of the cemetery association, so that there isn't any chance of making a single dollar by anybody excepting the bondholders, which bonds are absolutely valid and good because they were created at the time the cemetery was organized.

20 Mr. Carpenter: You say that these bonds are perfectly valid and good, and your witness testifies that the land is worth \$800 an acre and there are about thirty acres.

Mr. Lichtenstein: When I say "valid and good" I don't mean that their face value is good; what I mean is the actual issuing of the bonds was legal. That the bondholders will ever realize the amount of their bonds it is a foregone conclusion that they never will.

30 The Witness: I think I am safe in saying this. That out of ten people nine do not buy a plot until it is necessary, and as the cemetery grows older there are less plots sold, because the immediate want is supplied. We don't get people from New York, but only from a radius of a mile or two, and it is costing us more to take care of it.

By Mr. Berg:

40 Q. You are getting more for your plots than you did ten years ago? A. We don't deny that.

*Rutherford H. Walker—Direct.*

By Mr. Maidment:

Q. Are the people who are stockholders in the Fairview Development Company and the Fairview Cemetery Company the same? A. Practically the same. And I want to say, gentlemen, that we had a hard job to sell stock.

10

Q. You said that you had a few acres of meadow land worth \$80 an acre? A. Yes, sir.

Q. Don't you know that your father before he died held that at a figure approximately \$2,000 an acre? A. I don't know what land you are talking about.

Q. The same land that you speak of as being worth \$80 an acre? A. The land that we purchased for \$80 we purchased from Mr. Singer, who is here to testify.

20

Q. That adjoining your father's estate? A. Yes.

Q. What is that land worth? A. I don't know.

Q. What have you been holding it at? A. I know what it is worth, but I don't know what I hold it at. I don't know that it was ever for sale.

Q. You know it was in the market for sale? A. Yes.

Q. What was the price that your father held it for? A. I don't know.

30

Q. Did anybody ever ask you about the land? A. No, never had an offer.

Q. Who fixed the prices on his land? A. My father did.

Q. And you don't know what that price was? A. No, there is no demand for that land.

Q. What do you think it is worth now? A. About \$250; would be glad to let you have it for that if you want to buy it; will sell it to you tomorrow.

40

*Charles Singer, Jr.—Direct.*

CHARLES SINGER, Jr., sworn on behalf of the appellant, testified as follows:

Direct Examination by Mr. Lichtenstein:

10 Mr. Lichtenstein: Do you admit the qualification of Mr. Singer as an expert in real estate?

Mr. Maidment: No, I think you had better qualify him.

Q. Mr. Singer, what is your business? A. Real estate.

Q. For how many years have you been in the real estate business? A. Seventeen years.

Q. In what localities have you done business? A. In the County of Hudson, bordering right onto  
20 Bergen County, and we have done considerable business in Bergen County with mortgages.

Q. And during the course of these seventeen years have you had occasion to become familiar with the values of real estate near the northern border of Hudson County and the southern border of Bergen County? A. I am located on the southern border of Bergen County.

Q. How many years have you been located there? A. Seventeen years.

30 Q. Are you familiar with all the cemetery property we have been speaking of here? A. Yes, sir; I am.

Q. And are you familiar with all the property around to the south and east and west? A. I am.

Q. And have been for how many years? A. Seventeen years.

Q. Have you been actively interested around there? A. Every day of my life, excepting Sundays and holidays.

40 Q. And have you gone over this cemetery property? A. I have.

*Charles Singer, Jr.—Direct.*

Q. And are perfectly familiar with its location?

A. Yes, sir.

Q. And the general character of the land? A. I am.

Q. Are you familiar with the meadow land that we have been speaking of, the eleven odd acres?

10

A. Yes, sir.

Q. What, in your opinion, are those eleven odd acres worth?

Mr. Maidment: Just a moment; I would like to cross examine him as to his qualifications.

Q. (By Mr. Maidment.) Did you ever appraise any land in Bergen County for anybody? A. Yes.

20

Q. When? A. Last week.

Q. For whom? A. Charles F. Ruh.

Q. Where? A. Right by the station there at Fairview.

Q. When did you appraise any property before in Bergen County? A. I am appraising it practically every month.

Q. For whom? A. Anybody we invest money for up there; it comes into my hands.

Q. Who is "we"? A. Our firm.

Q. Who is your firm? A. Charles F. Ruh & Company.

30

Q. Is that a loan company? A. No, money that is handled by us for our clients.

Q. How much have you invested on bond and mortgage for clients in Bergen County? A. I dare say \$600,000.

Q. In Bergen County? A. Yes, sir.

Q. In the vicinity of Fairview? A. Yes, sir.

Q. \$600,000 in Fairview and vicinity? A. In that section, Columbia Realty Company and Hudson Heights Company.

40

*Charles Singer, Jr.—Direct.*

Q. How many pieces of property have you appraised in the Borough of Fairview? A. In the Borough of Fairview? Oh, I may have appraised thirty or forty.

10 Q. In the location of the cemetery? A. It is all in close proximity there, in the surrounding neighborhood. I have been Vice President and am still of the Hudson County Land Brokers.

Mr. Maidment: I think perhaps the witness is qualified.

Q. (By Mr. Lichtenstein.) Is the land in the northern part of Hudson County similarly situated to the land that we are speaking of now? A. Very similar except slightly better.

20 Q. That is higher priced and better? A. Yes, sir.

Q. And is the location better? A. Yes, but the character of the soil is about the same.

Q. Now what, in your opinion, Mr. Singer, is the value of the meadow land that we have been speaking of? A. I have sold four distinct parcels—

Mr. Maidment: I object to that; that isn't the question.

30 Q. What is the value of this land, the eleven acres? A. \$80 an acre.

Q. Would that be a good figure for it? A. Good figure.

Q. Now, what is the character of this meadow land? Is there any bottom to it, the same as all the rest of our meadow land? A. It is marshy soil until you get down a few feet and then it is clay.

40 Q. Are you acquainted with the upland? A. Yes.

Q. And will you describe the general character

*Charles Singer, Jr.—Direct.*

of that land to the board? A. The particular land in question, the twenty-six acres, owned by the Fairview Development Company runs along at a grade; it lies between the Dallytown and the Bulls Ferry Road and the Hackensack plank road. I should say it is directly east of the Hackensack plank road to a distance possibly of a thousand feet, maybe twelve hundred feet. 10

Mr. Maidment: Would it help the Board if we turned to the standard atlas?

Pres. Winton: We have been over the property and know it. It is not necessary.

Q. What can this land be used for, Mr. Singer?

A. As it is now, for cemetery.

Q. Could it be used for any other purpose? A. It could; it could be used, possibly, for farming, but we have had cases in Hudson, right there at the West Shore tunnel— 20

Mr. Maidment: I object to that.

Q. Well, what could it be used for? A. I would say almost any use it could be put to except farming or raising trees, such as a nursery. I don't think you could make a success of that.

Q. You don't think it could be successfully tilled and used for farming? A. No. 30

Q. Could it be used for dwelling purposes? A. Part of it.

Q. About how much of it? A. Possibly ten acres.

Q. Is there any disadvantage that arises by reason of its location? A. Yes.

Q. What are the disadvantages? A. Well, the greatest disadvantage is the fact that it borders both sides on this tunnel, and the trains going in and out cause a smoky and dirty atmosphere. There are cases on record in Hudson County 40

*Charles Singer, Jr.—Direct.*

where they couldn't use it, as the gases would kill any vegetation there.

Mr. Maidment: I object to that.

10 Q. Have you had experience with properties located at the mouth of tunnels where railroads run? A. I have had property for sale there and couldn't sell it.

Q. And the cause of your failure to sell it was what? A. Just the nuisance of the atmosphere being filled with smoke and dirt, and there are only two uses you could put this to; one is farming, if you could use it for that, but it is very rocky and I doubt whether you could use that rocky part for anything. There are ten acres of absolutely worthless land there.

20 Q. How much would you say this land which you say consists of ten acres and which you think is absolutely worthless, would be? A. \$450 an acre if a man could get it. I couldn't get it.

Q. Do you think it would bring \$450 an acre in the market? A. It would not, not at the present time; that is, in May last year it wouldn't.

Q. How many acres did you say? A. Ten I say of that bad, rocky stuff there.

30 Q. Well, how many remaining acres are there there? A. If you will permit me, gentlemen, I will explain just how I arrive at my conclusion of value; I take that which borders on both streets, that is on the upper Bulls Ferry Road and the Dallytown Road and I take that which borders on the plank road and lay it out to the best use you could put it to, and then I would say a lot of standard dimensions, 25x100 was worth so much. I would say the lots upon the Dallytown Road would be worth \$100 a piece. There are  
40 no improvements and the slope is very deep. It would run to a depth in the rear of say 20 feet

*Charles Singer, Jr.—Direct.*

at the end of the 100 feet. You would have a very expensive fill there. As I say, there are not any sidewalks, nothing more than a dirt path, no curbing, no sewer, and I question whether there is water.

Q. Now, then, Mr. Singer, how much would you say that the remaining land of the cemetery was worth an acre? A. Well, I would say—I would take the next item and on the plank road I would say the plots there would be worth \$200 ordinarily, and I am going to appraise them at \$200; but this property has a very great disadvantage at that particular spot; it has the disadvantage of the dirty, cloudy condition of the atmosphere because of the railroad, but to overcome that they have built a viaduct there and this viaduct is some twenty feet high, and I dare say that 200 or 300 feet of this isn't to be used at all because you could not get at it unless you went in a roundabout way. So that, if you average it, I would appraise it liberally at \$200 a lot. There are no improvements there, either, and that would be a liberal estimate of the value along the plank road. Then I would separate the acreage and I would say there are ten acres of that with an outcropping of rock and everything at the mouth of the tunnel, and I wouldn't consider that worth more than \$450 an acre. It is inaccessible; it has no particular value that I could see that you could use it for. And then there is a tract of ten acres of good land. That was a farm and I consider that the best land of the whole plot.

By Mr. Conklin:

Q. What do you consider that worth? A. About \$800 an acre. If I allowed \$200 for the lots which I have taken that would be the remainder.

Q. Taking your figure of \$200 for the front

*Charles Singer, Jr.—Direct.*

lots, how do you figure that? A. 42 lots are taken out.

Q. Of what? A. The plank road.

By Pres. Winton:

10 Q. Mr. Singer, what would you consider the part you valued at \$800, the ten acres, would be as to value for cemetery purposes? A. Well, of course, the franchise would enter into that.

20 Q. The franchise is already granted. Supposing this is a cemetery association already and has a franchise, and desires to purchase from this Development Company or any other company, and supposing that I owned that ten acre piece and they desired to purchase it from me for cemetery purposes, in your judgment does that increase or decrease its value? A. I would say it would increase it.

Q. Now, what would you estimate that increased value of the ten acres at?

Mr. Lichtenstein: By reason of the franchise.

30 Q. (Continuing.) By reason of the Cemetery Company desiring to purchase from me that ten acres? A. You will have to go a little further if you want me to answer that.

Mr. Lichtenstein: We are speculating now.

Pres. Winton: No, I am not speculating; I am trying to arrive at the question of what that ten acres is worth and what it ought to be assessed for.

40 A. In other words, if I am an assessor, we will say, in this particular municipality what would I assess that for, under existing conditions?

Q. Yes, that is the point. A. Well, I will say this: Maybe double that; maybe \$1600.

*Charles Singer, Jr.—Direct.*

By Mr. Maidment:

Q. An acre? A. Yes, sir. Of course, I am keeping in mind the upkeep and the obligations of this company.

Q. Keeping in mind simply this fact, that here are ten acres that you can sell to the Cemetery Company and the only obligation of the Cemetery Company would be to keep up the grounds for all time? A. Yes, sir, you would estimate practically what that cost would be and include it in the price. 10

Q. Now, also in estimating that, or figuring it that way, would you estimate what the Cemetery Company would get per acre in return? A. I would; I have that all in mind, and this word "perpetual" has got me thinking. What does that obligation mean. When you come to figure it out you can hardly calculate it—the perpetual up-keep. It has an awful broad meaning. 20

By Mr. Lichtenstein:

Q. It means this, that forever and ever the expense of maintaining this property, keeping men employed, keeping the walks in good condition, keeping the graves green, keeping the tombstones up if necessary, and protection of all kind, and there is a great deal of that once this cemetery is filled up, isn't there? A. Yes, and washouts. 30

By Mr. Maidment:

Q. But don't they keep a certain amount for each grave?

Mr. Lichtenstein: They are supposed to get it but they don't get it.

A. They are selling the land; they don't get any direct money from many grave-holders for the up-keep, or from the plot owners. In listening to the testimony, I think the fellow that made any money on this is the fellow that got the bonds. 40

*Charles Singer, Jr.—Direct.*

Outside of that I don't think there is anything in it.

By Mr. Lichtenstein:

Q. Now, Mr. Singer, so that your figures, as I understand it, stand about this way: For the eleven acres of meadow land about \$80 an acre— A. \$880 yes.

Q. For the ten acres of rock land \$450 an acre? A. Yes.

Q. That would be \$4,500; for the lots along the plank road, about 42, as you have figured it, at \$200 a lot would be \$8,400, and the ten acres which you say is land which has been tilled as farm land, about \$800 an acre? A. Yes. Now there are sixty more lots on Bulls Ferry Road and Dallytown Road at \$100 each; that would be \$6,000.

Q. This ten acres of land, then, would be entirely isolated from the rest of the land? A. Yes, sir.

Q. So that if you sold off the ten lots in front, the forty odd lots in front and the 60 lots on the other street—is that right? A. Sixty in front.

Q. You would have to cut through streets in order to develop it at all? A. Yes.

Q. And that would be on a side hill? A. On a side hill. I would like to say this, if you will let me; I don't think a man would buy that class of land for development when he can buy other land that is so much better for a slightly increased price.

By Mr. Carpenter:

Q. You say you don't think a man would buy; can a man buy a foot of this ground except for cemetery purposes? You have spent a good deal of time in telling us what it is worth for farming purposes, can anybody buy a foot of that land for anything except for cemetery purposes? A. I don't know.

*Charles Singer, Jr.—Cross.*

## Cross Examination by Mr. Maidment:

Q. You went through the cemetery just before making this appraisal? A. I did.

Q. Is the cemetery well kept? A. That part of it is that is just used for interment purposes.

Q. Are there monuments there? A. Oh, yes. 10

Q. Monuments all in good condition? A. In good condition.

Q. All in good condition? A. Yes.

Q. Clean? A. Yes.

Q. Then how does the smoke affect them? You didn't see any monuments affected by smoke, did you? A. More or less.

Q. Did you see monuments affected by smoke? A. Yes.

Q. Then what do you mean by saying they were clean? A. I mean to say it was apparently clean as it could be. Smoke comes to-day and it rains to-morrow, but the effect would be the same. 20

Q. Did you see any dirty monuments there? A. Yes.

Q. Black? A. No.

Q. Where were they located with reference to the tunnel? A. Right directly east of it.

Q. How far away? A. Oh, 400 to 600 feet, and then to the northeast of it. 30

Q. About the same distance? A. No, further up.

Q. Do you mean to say that monuments located from four to six hundred feet and possibly a thousand feet away from this tunnel are affected by smoke? A. That is what I mean to say.

Q. Are you a stockholder in the Fairview Development Company? A. No, not so fortunate.

Q. Are you a bondholder of the cemetery? A. No. 40

Q. Do you hold any cemetery indebtedness? A. No.

*Charles Singer, Jr.—Cross.*

Q. Of anyone? A. No.

Q. Any of your partners hold any? A. I have no partners now; our partnership was dissolved seven years ago. We are a corporation.

Q. Does your corporation hold any? A. George Lumoise holds a small one.

10 Q. Is Mr. Ruh a member of your corporation? A. Yes, but he only holds ten shares out of a thousand; he is a very nominal stockholder.

Q. Does he hold any shares of stock in the cemetery or in any of its bonds? A. He has never told me so and I have never discussed it with him.

Q. But you do say your company holds some of these? A. No, no, no.

20 Q. Have you bought or sold any lots in the neighborhood on the plank road? A. Yes.

Q. When was the last, about? A. A little over a year ago; but it is not right there, it is further south.

Q. Property of about the same character? A. Better—far better.

Q. Was it in Bergen County? A. Hudson.

Q. How far away? A. I should say a mile away.

Q. At what price? A. Four lots for \$1,100.

30 Q. How much better than the lots you have testified to on the plank road? A. I consider them worth twice as much.

Q. How large are the lots that you value at \$100, 25x100? A. Yes, standard sized lots.

Q. On Dallytown Road? A. Yes.

Q. Is that opposite the Luckhardt property? A. Yes, Luckhardt bought that property, fifty lots, \$10,500, with a house on it.

40 Q. How much was the house worth? A. It was a very substantial house; also a barn on it that cost about a thousand dollars. The character is

*Charles Singer, Jr.—Cross.*

about the same. The house probably cost \$10,000 but I suppose it is old, and the cemetery came there and I think the cemetery is a detriment to it. And I want also to say this, in fixing that land at \$100 I think also its value is affected by the cemetery there. I don't think it would be desirable property to purchase.

10

Q. (By Mr. Lichtenstein) The Luckhardt property, you say, was purchased with the buildings on it? A. Yes, for \$10,500.

Q. And there are how many lots? A. Fifty lots.

Q. How much would you say the lots fronting on the street were worth apiece, on the Luckhardt property? A. \$150 possibly. I would give a little more for the Luckhardt property, because they are high.

20

Cross Examination by Mr. Berg:

Q. The Luckhardt property is an old discarded mansion? A. Not discarded, no.

Q. There is no other mansion around it except a lot of small houses? A. No.

Q. Where is that house located? A. Down the hill. There are a number of houses down on the plank road.

Q. How far is that from the Luckhardt property? A. What is that?

30

Q. These houses you speak of on the plank road? A. Maybe some are 2,000 feet.

Q. On the plank road in Bergen County? A. Yes, sir.

Q. Where is there a mansion of the size of the Luckhardt property in Bergen County within a mile of the Luckhardt property? A. There isn't anything there, but when you get into Hudson County there is the Macfarland place.

Q. How far is that from Bergen County? A. I guess half a mile.

40

*Charles Singer, Jr.—Cross.*

Q. Right across the street from Luckhardt's are small one and two-family houses? A. Yes, good development.

Q. That used to be the old Probst mansion? A. Yes.

10 By Mr. Lichtenstein:

Q. In giving your values of this property, are you giving them as if you were assessing or appraising them for the purpose of sale, or for the purpose of mortgaging? A. I am appraising them with the idea of being an unwilling purchaser—the usual rule where a bargain is made under those circumstances.

20 By Mr. Maidment:

Q. That is below what the market value might be? A. I won't say there is any market value at this moment.

Q. Do you know of any lot within 500 feet that can be bought for \$500 near the cemetery? A. Yes.

By Mr. Berg:

30 Q. Within 500 feet of the Luckhardt property; can you name any lot that you can buy for \$100? I will increase it to a thousand feet. A. Yes.

Q. Where is it? A. There was an auction sale held and they didn't average, with improvements, sidewalk, curb and all improvements, \$150.

Q. Where was that? A. Right at Haas'.

Q. Where is Haas'? A. Right down the street on the plank road.

40 Q. That is on the hill there, a thousand feet from the Luckhardt property? A. You said a thousand feet; I am within the thousand.

*Charles Singer, Jr.—Cross.*

By Mr. Maidment:

Q. That is property sold under the Martin Act?

A. No.

By Mr. Lichtenstein:

Q. Now, let's know something about that property; that is within a thousand feet, you say? A. Yes. 10

Q. Was that graded? A. Graded and curbed, plank road development, no sewer I don't believe.

Q. When was it sold at public auction? A. Sold about four years ago, but there have been no sales since.

Q. Have there been any sales since that time? A. We are the only corporation doing any selling there in that neighborhood. 20

Q. And that property with all its improvements didn't average more than \$150 a lot? A. No, sir.

By Mr. Berg:

Q. Was there a lot that you could have bought for that on the 20th day of May? A. Yes, you can get any number of them.

Q. For \$150? A. Yes. Now there is a sale of the Haas property right near the Hoffmann property; you can buy that for less than \$100. 30

Q. Where is that? A. Right there at Haas' going down that grade, right off the boulevard. You can get that to-morrow.

Q. Any in Bergen County that you can get for \$100 a lot? A. Yes, you can get any amount of it in Bergen County for \$100 a lot, of the development kind if you want it.

Q. I mean up here in the neighborhood of the Luckhardt property or within a thousand feet of the Luckhardt property? A. Yes, you can get this land I speak of. 40

*James Nolan—Direct.*

Q. Where is it? A. Along that development that is down there.

Q. I mean in Bergen County; that is in Hudson County. A. I don't know of any, but I do know that I can get you some there. Walker will sell you some for that.

10

By Mr. Lichtenstein:

Q. Now, Mr. Singer, this land that you speak of that was sold at auction and didn't average but \$150 a lot; would you say it was twice as good as this land? A. No, I wouldn't.

Q. Well, is it better land? A. Better land; away from the cemetery.

Q. Is it better situated than this? A. Yes, it isn't so close onto the cemetery.

20

JAMES NOLAN, sworn on behalf of the appellant, testified as follows:

Direct Examination by Mr. Lichtenstein:

Q. What is your occupation? A. Assessor of taxes.

Q. Where? A. North Bergen, Hudson County.

Q. That is right adjoining the township in question? A. Yes.

30

Q. What is your business? A. Real estate.

Q. For how many years have you been in the real estate business? A. Four years.

Q. And have you done business in Bergen County? A. I had one transaction in Bergen County.

Q. Are you acquainted with the cemetery property in question?

40

Mr. Maidment objects on the ground that the witness having sold only one piece of property in Bergen County is not qualified.

*James Nolan—Direct.*

Q. Mr. Nolan, have you sold and bought, and acted as representative in the sale and purchase of land in your township? A. I have.

Q. And for how many years? A. For the last four years.

Q. And is that land of the same general character as this right across the border? A. Mostly. 10

Q. Are you acquainted with the land and the location of the land of the cemetery? A. I know where it is; I have been on it several times.

Q. And the land which runs along the side of the hill—top of the hill—land in Hudson County, is that of the same general character? A. No, I wouldn't say that the land in Hudson County, adjoining the cemetery is the same; I would consider it better than that across the line in Bergen County. 20

Q. Now, do you know these meadow lands that have been spoken of? A. I do.

Q. What in your opinion, is that meadow land worth?

Mr. Maidment: Now, just one moment; I want to cross examine him as to that; I am going to object to this gentleman as an expert, because I don't think he is properly qualified. He has had one transaction here; he lives in another township, which is in another county, which land is different and must be, because it is under a different form of government and in a different town entirely. He knows where the cemetery is and he knows where this meadow land is, but I don't think that properly qualifies him as an expert. I would like to have the Board rule on that. 30

Mr. Conklin: The mere fact that the land is situated in another county under a differ- 40

*James Nolan—Direct.*

10 ent government doesn't make the land any better or any worse. The law says they shall all be assessed equally. I understand Mr. Nolan is an assessor and he is assessing property adjacent to this property, and it seems to me it is material for the Board to know the value of the adjacent property.

Mr. Maidment: I would like to cross examine him as to his qualifications.

Q. How far is the property that you assessed from this cemetery property? A. The property I assessed adjoins a part of the cemetery property.

Q. Do you mean to say that a part of the cemetery property adjoins property in your township? A. I do.

20 Q. That is, Fairview Cemetery? A. Yes.

Q. (By Mr. Lichtenstein.) Now then, what do you say this meadow land is worth an acre, Mr. Nolan? A. I will refer to the field book as to the assessment.

Mr. Maidment: This is in Hudson County?

Mr. Lichtenstein: Part of this cemetery.

Mr. Maidment: But no part of the thirty-five acres we are talking about?

30 Mr. Lichtenstein: A part of this very eleven acres you are assessing us for.

A. (Continuing) That is assessed at \$200 an acre, four acres \$800.

Q. (By Pres. Winton.) That is presumed to be its full value? A. A little bit better, I think, from what I have heard and know of the value of meadow lands that have been sold throughout North Bergen.

40 Q. (By Mr. Smith.) And would you say that that was a fair value for that property? A. I would.

*James Nolan—Direct.*

Mr. Smith: As the assessor of the Borough of Fairview, I object to that question. He has no right to use expert testimony, and that thing he has got there is his field book, and why should he give that testimony? He would only criminate himself.

Mr. Lichtenstein: I am going to call you later. 10

A. (Continuing) There is a copy of this field book with the Hudson County Clerk. If this Board wants the information, they don't have to take my word for it; it is a record of Hudson County.

Q. Now, Mr. Nolan, take the upland or rocky portion of the cemetery and tell us what you think that is worth an acre. 20

Mr. Maidment: You are asking him now to testify as an expert: he is not giving testimony from the book?

Mr. Lichtenstein: Yes; he is a real estate man.

A. There are parts of it above the viaduct there that I would consider worth nine hundred dollars to a thousand dollars an acre, and there is others near the railroad that I wouldn't consider worth over \$500 an acre. 30

Q. What portion of it would you say was worth from \$900 to \$1,000 an acre? A. From looking at it casually, I would say from eight to ten acres. I never measured it up; I don't know just exactly how much there is there.

Q. That is the property Mr. Singer said was worth about \$800 an acre? A. I should judge that is it.

Q. Now take the rocky land; how much would you say that was worth an acre? A. There is 40

*James Nolan—Direct.*

rocky land right along on both sides of the tunnel there. I wouldn't think that would be worth more than \$500 at the most.

Q. Now, Mr. Nolan, you spoke of having one transaction in Bergen County, one sale; how long ago was that? A. In October of last year.

10 Q. Has there been any improvement in that locality in the last four or five years in the values? A. No.

Q. They are just about the same? A. Yes.

Q. Where were these sales of yours? A. On the south side of Prospect Street, about 200 feet east of the Bergen Turnpike.

Q. And is that an improved street? A. No.

20 Q. What is it? A. I wouldn't say that there are any improvements on there at all. It is a street that runs from Bulls Ferry Road to the Bergen Turnpike. I think it is about a 800 ft. street. It is in pretty good condition, but it is not improved.

Q. How much did those lots sell for? A. \$200 a lot. I sold three lots in there for \$600.

Q. (By Mr. Conklin.) What is the size, 25 x 100? A. 25 x 108; they were a little bit better than 25 x 100; 25 on the street.

30 Q. Mr. Nolan, do you know the Garret Duryea property? A. Yes; it is the A. W. Duryea property, I think.

Q. How far away from this land it that? A. About a quarter of a mile.

Q. And what kind of land is it? A. It is all good farm land.

Q. And land that can be used for development purposes? A. Oh, yes, it could be used very nicely for development purposes.

40 Q. And is it better land than this land? A. Well, it is more level than this land.

*James Nolan—Direct.*

Q. Can it be used to better advantage than this land? A. Yes.

Q. And do you know what that property is being sold at or held for sale at? A. Yes. I don't know it to be a fact, but I understand it will be sold for a thousand dollars an acre, including the house and buildings on it.

10

Q. (By Mr. Maidment.) How many acres? A. 100 acres to be sold for \$1,000 an acre.

Q. That is west of the Bergen Pike? A. Yes.

Q. Now, do you know the McMahan property? A. McMahan has two or three tracts.

Q. The Hamilton Avenue property on the Bergen Turnpike? A. Yes.

Q. And how would you compare that property? A. That is on the east side of the Bergen Turnpike and the majority of that is almost level. It runs back about 500 feet and there is a slight grade up the hill there.

20

Q. And that property is more desirable than this property? A. I should consider it so. It hasn't any cemetery around it.

Q. And it hasn't any tunnel to throw the smoke on it as this has? A. No, it has not, and it has two good streets on the sides of it.

Q. And that property was sold a short time ago? A. A year ago last summer, I think.

30

Q. And has that property increased in value any since that time—the market value, at all? A. No, it is about the same.

Q. How many acres were there there? A. There was eleven and one-half acres all together, that is, taking both sides of the road. There was seven acres on the west side and about four and one-half acres on the east side.

Q. How much did the eleven and one-half acres sell for? A. I understand \$6,500.

40

*James Nolan—Direct.*

- Q. Less than a thousand dollars an acre? A. Yes.
- Q. And that is land that is far superior to this land? A. Oh, yes.
- Q. Do you know the Dieckman property? A. Yes, sir.
- 10 Q. What kind of land is it? A. There are two or three Dieckman tracts there.
- Q. Directly north of the County Park property? A. That was the Stevenson tract of fifteen acres.
- Q. And are you familiar with that property? A. Yes.
- Q. And what kind of property is that—what kind of land? A. That is mostly on top of the hill and it is almost level.
- 20 Q. And with trees around it? A. Yes, trees on two sides of it.
- Q. And streets that lead to the boulevard? A. Yes.
- Q. When was that sold, did you say? A. That was sold about a year and a half ago.
- Q. And do you know how much an acre that brought? A. I don't know what it brought.
- Q. What is it worth? A. It is assessed at \$15,000 for the fifteen acres.
- 30 Q. And is that a fair value for that property? A. That was a valuation that the Hudson County Board put on as the true valuation.
- Q. After a full hearing? A. Yes.
- Q. And a determination? A. Yes.
- Q. A thousand dollars an acre? A. Yes.
- Q. Do you know the Danielson plot—the William Danielson property? A. There is no William Danielson now; that is the Winfield property.
- 40 Q. That is right, the Winfield property; what kind of property is that compared with this? A. That is a different property altogether. The conditions there are the same as at the McMahon property.

*James Nolan—Direct.*

Q. Is there any comparison between the two plots at all? A. No.

Q. I mean, they can't be compared as being the same? A. No, they're not anywhere near the same, because this property here is rocky and hilly and the other is almost clear.

Q. Do you know that property was offered for sale to the County of Hudson recently? A. I don't. 10

Q. You don't know that? A. I don't.

Q. You don't know how much was offered by the County of Hudson for it? A. I don't.

Q. How much would you say that that property was worth an acre? A. Oh, about a thousand dollars an acre.

Q. And in that good condition? A. Yes.

Q. With streets around it? A. Streets on two sides of it. That is on the south side of Hamilton Avenue and on the east side of the Bergen Turnpike. 20

Q. And with streets that lead to the Hudson County Boulevard? A. Yes.

Q. And adjoining the new County Park? A. Within almost a half a mile from the new County Park.

Q. It is right next to the County Park Realty Company? A. The McMahan tract is between it and the County Park Realty Company. 30

Q. Do you know the property of the County Park Realty Company? A. Yes.

Q. And that adjoins the County Park, doesn't it, or is near it? A. No, the McMahan tract is between the Danielson tract and the County Park property.

Q. How does that property compare with the cemetery property? A. The County Park. 40

Q. I mean the Development Company property. A. That is all improved property.

*James Nolan—Direct.*

Q. And do you know how much that land is worth an acre, or how much it was sold for? A. No, I don't know what it was sold for an acre.

Q. What is it assessed at an acre? A. I could tell you by lots.

10 Q. That is laid out into lots, is it? A. Yes, that is all sidewalked and curbed.

Q. How far away is that? A. I should say 1,500 or 2,000 feet.

Q. But that is in Hudson County and is improved property and has streets around it? A. Streets all through it.

Q. And away from the swamp? A. Yes.

Q. And practically level land? A. Oh, no; it is all on the side of the hill.

20 Q. A grade of how much, about? A. Eight or ten per cent. grade.

Q. But this other property, the Dieckman property, and the other property that you spoke of, is level? A. On the top of the bill, the Dieckman property is. The Duryea property is level property and at the foot of the hill.

Q. All within a short distance of this property? A. Yes; the Duryea property is five or six hundred feet.

30 Q. Is there any land around there that is worth more than a thousand dollars an acre, Mr. Nolan?

A. There is one plot of land on the east side of the Hackensack Plank Road, the McFarland tract that was assessed at \$2,000 an acre.

Q. And that is the only piece around there? A. That is the only piece.

Q. What is the reason for that high assessment?

A. It is a beautiful piece of property.

Q. Best piece of property around there, isn't it?

40 A. Yes.

*James Nolan—Cross.*

Q. (By Mr. Conklin) How near is that to the cemetery? A. I should judge a thousand feet or twelve hundred feet south of the cemetery.

President Winton: Isn't that getting too far away?

Mr. Lichtenstein: If it is, it is the same character of property. It is better land; that is the only difficulty. 10

President Winton: My idea is to get the adjoining property.

Mr. Lichtenstein: I guess that is all.

## Cross Examination by Mr. Berg:

Q. Where is the Stevenson, or the Dieckman tract that you speak of? A. On the top of the hill. 20

Q. What street? A. Above Thirty-ninth Street.

Q. That is about three-quarters of a mile from the cemetery, isn't it? A. Oh, no, that is just below Haas'.

Q. How many feet is it from the southerly boundary line of the cemetery, about? A. Oh, I wouldn't judge that to be more than five or six hundred feet.

Q. That is upon the top of the hill? A. Yes, sir. 30

Q. Upon the boulevard? A. It runs back from the boulevard—hold on, it is more than five or six hundred feet; it would appear to be a thousand or more feet.

Q. Now, where is the Danielson plot situated? A. On Hamilton Avenue.

Q. That is a good mile away from the cemetery? A. Oh, no, about a half a mile.

President Winton: Don't get so far away; it is of no assistance to the Board. 40

*James Nolan—Cross.*

Mr. Berg: I want to eliminate these pieces of property from consideration. As soon as we get over a thousand feet I am going to ask the board to eliminate those properties and get something in close proximity to the cemetery.

10

Q. Now, where is the Duryea tract? A. The Duryea property, I should judge, would be about six or seven hundred feet away. It is on the other side of the street from this property. Taking in a direct line I don't think it is over six or seven hundred feet.

Q. Now, that is land west of the Bergen Pike, isn't it, and there are about 100 acres of land, isn't there, there? A. Yes.

20

Q. That is north of the stone crusher? A. Right directly adjoining the stone crusher.

Q. A part of that 100 acres is swamp land, isn't it? A. No.

Q. Doesn't it run into the swamp land in the back? A. No, if you know the lay of the land, it runs back on the other side of the railroad.

Q. It is rocky, and they use that for the stone crusher? A. No, it is just below there.

30

Q. That is right near the McMahon and Public Service property? A. It is the Public Service property.

Q. What do you assess the Public Service at an acre—that and the adjoining property? A. It is in bulk. There are six acres of upland assessed at \$3,500.

Q. What is the meadow land assessed at? A. That is another meadow land; that is Babbit's.

40 Q. And this you assessed at \$3,500 is solid rock there, belonging to the Public Service, the stone crusher? A. There is about two acres of rock.

*James Nolan—Cross.*

Q. That is the nearest point of that Duryea tract? A. Yes.

Q. How far is the furthest point south of that Duryea tract from the cemetery? A. They have a frontage of 1,500 feet or so; it runs from 600 feet to 2,100 feet.

Q. Where is the McFarland tract? A. Right opposite Duryea's. That is a thousand or eight hundred feet from the cemetery—it is about the same distance and on the same side as the cemetery. 10

Q. Now, Mr. Nolan, take the same land that lies between the cemetery and the McFarland tract; could you turn to your tax assessment and show what lots or acres you have in North Bergen on the east side of the Bergen Pike, that has been assessed on the 20th of May—land similar to this land of the cemetery. A. We have no land on the east side similar to the cemetery, except those tracts that I have mentioned, because all the other is cut up and developed into improved property with streets. 20

Q. All lots? A. Yes, sir.

Q. What land immediately adjoins the cemetery on the south? A. The Clinton Realty Company.

Q. Isn't the Clinton Realty Company's entire land developed and laid out into streets? A. I think it is. 30

Q. Now, what do you assess the lots of the Clinton Realty Co., facing and fronting on the Bergen Pike?

Mr. Lichtenstein: Is that a criterion?

That is property that is improved.

Mr. Berg: I will withdraw the question.

Q. Are there any improvements in the Bergen Pike in front of this Clinton Realty property that is not in front of the cemetery? A. Yes. 40

*James Nolan—Cross.*

Q. What does it consist of? A. One sidewalk there.

10 Q. Anything else besides a dusty turnpike? A. If the Board will allow me to explain, most of the cemetery property in front of this viaduct is about twenty feet high and there is no access directly from the property to the Bergen Turnpike, without going at least a hundred feet or two hundred feet away. Those conditions do not exist in Hudson County. That viaduct is in Bergen County and directly in front of the cemetery property.

Q. Is the upper end of the cemetery affected in the same way? A. No.

20 Q. Turn to your assessment on the lots and let us know what you have got? A. I have the Clinton Realty Company assessment here, and I have the next back of it, the Boehler tract, which is the tract next to it.

Q. What do you assess those lots at facing on the Bergen Pike? A. \$400 for the corners and \$200 inside lots.

Q. That is the same kind of land on which the cemetery is based, on the Bergen Pike? A. Above the viaduct.

30 Q. Now, can you turn to your assessment on the Dallytown Road, just north of that, the first road south of the cemetery, between the cemetery and the first street in North Bergen? A. I just brought this one field book with me. I think I have the map of Hoffman in there, which is just south of there.

Q. The Hoffman is acreage? A. No, it is in lots.

40 Q. What is the value of that? Just turn to your book and tell me what, in your estimation, is the value of that land? A. Which land?

*James Nolan—Re-Direct.*

Q. The lots facing and fronting on the Dallytown Road, which is south of the cemetery. A. South.

Q. Yes, just south of the cemetery. A. About \$150 to \$200, according to the grade. You know there is a lot of that that slopes right down to the road. 10

Q. I mean the lots fronting on the Dallytown Road. A. That is what I am speaking about. From Dallytown Road they slope right back.

Q. What do you assess the lots on the Dallytown Road, at that have the same frontage and with similar conditions as the cemetery frontage? A. I will see in just one minute. (Witness refers to his field book.)

Q. About what, in your opinion, would you value those lots at? A. \$150 to \$200. 20

Q. Now just south of the cemetery is the Clinton Realty Co.'s development, isn't it? A. Yes.

Q. What is the value of their lots? A. Their lots run from \$100 to \$200 where there is improvements—where it is sidewalked, curbed and guttered.

Q. Are you familiar with the Luckhardt property, right next to the cemetery? A. I know where it is.

Q. That is laid out into building lots, too, isn't it? A. I don't know that; I know where the property is. I don't know whether that is mapped or not. 30

## Re-direct Examination by Mr. Lichtenstein:

Q. You say the Clinton Realty Company property is laid out into streets and is graded, guttered and curbed? A. Yes, sir.

Q. And is it sewerred? A. I don't know as to sewers. 40

*James Nolan—Re-Cross.*

Q. Don't they have a sewer up there? A. We have no sewer; we have a drain. I am not sure whether that is in the Clinton Realty Company's property or not; I couldn't say positively on that.

10 Q. Is that a better grade than this property belonging to the cemetery? A. Yes, there are streets that go through there. You can go right from the Bergen Pike to the Boulevard.

Q. And that, you say, even with all these improvements, is only \$100 to \$125? A. It is from \$100 to \$200, according to location.

Q. No viaducts there? A. No.

Q. No smoke there from the tunnel? A. Not to amount to anything, no, sir.

20 Q. Now, this other piece of property that you spoke of, being \$400 for corners and \$200 for inside, the one preceding this, I don't remember the name of the tract— A. Maulback-Bochker tract.

Q. And that is improved? A. Yes.

Q. And that is all they are assessed at? A. Yes.

Q. No viaduct there? A. No.

Q. No tunnel opening? A. No.

## Re-cross Examination by Mr. Berg:

30 Q. How far from this tunnel opening is this Clinton Realty Company's property facing and fronting on the Turnpike? A. Three or four hundred feet.

Q. It is just as far from the tunnel as the cemetery? A. Oh, no, the cemetery property is on both sides of it. I don't know whether they own on the other side of the tunnel or not.

Mr. Lichtenstein: They do on both sides.

40 Q. In your estimation do you think that the tunnel opening would depreciate the entire value

*James Nolan—Re-Cross.*

of the land of the cemetery, by reason of the smoke nuisance? A. No.

Q. It wouldn't depreciate it any more than it would the Clinton Realty tract, would it? A. Yes, parts of it it would. A part of the cemetery is quite a distance from this railroad.

Q. But isn't the Clinton Realty Company's entire tract within five or six hundred feet from the mouth of this tunnel? A. Yes. 10

Q. And the cemetery is about the same? A. Yes, the biggest portion of the cemetery is over in Bergen County, but there is a lot of that back on the hill.

Q. Now, in your estimation, do you think the property in the neighborhood, within a radius of 500 feet, is depreciated by reason of this smoke nuisance? A. Yes. 20

Q. To what extent? A. Oh, it would make at least a reduction of 30 or 40% on the property.

Q. Within 500 feet of it? A. Yes.

Q. Then this plot of land and these lots on the Boehler tract, which are now worth \$200 and \$400, if the tunnel wasn't there would be worth \$400 and \$600? A. Yes.

Q. And this land that you give the figures of, the Boehler tract, and the Clinton Realty tract, is all affected by the smoke and smell? It is all in one neighborhood? A. No. 30

Q. Now, considering this cemetery as a whole, is the Boehler tract any further away from the tunnel than, we will say, that part of the cemetery upon the Dallytown Road? A. Yes.

Q. How much further? A. Oh, quite a distance further.

Q. How far do you judge it to be, the distance between the Dallytown Road and the mouth of the tunnel? A. I have never come down over there, 40

*Harry G. Smith—Direct.*

and I don't know just how far the mouth of the tunnel is from the road.

Q. 500 feet, isn't it? A. I should say so.

Q. Isn't the Boehler tract even five or six hundred feet from the cemetery? A. The lower part.

10 Q. And the Clinton Realty Company's tract is adjoining the cemetery on the south, and that is within five or six hundred feet? A. Yes.

Q. And if the Clinton Realty Company's tract and the cemetery company's were combined in one acreage, the tunnel would be about the center of it, wouldn't it? A. Almost, yes.

---

Afternoon Session.

20 HARRY G. SMITH, called on behalf of the appellant, having been previously sworn, testified as follows:

Direct Examination by Mr. Lichtenstein:

Q. Mr. Smith, you are the assessor of what borough? A. Fairview Borough.

Q. And the assessment in question was made by you, I presume? A. Yes, sir.

30 Q. As well as all the other assessments in the borough? A. Yes, sir.

Q. You are familiar with the Luckhardt property, which is right opposite the property in question? A. Yes, sir.

Q. Will you turn to your assessment book, please?

40 Mr. Maidment: Now, I object to that, if the Board please. I object to the use of the book. Mr. Smith is not here defending any other assessment, except the assessment in question, and therefore any other assessment cannot be brought into the consideration of the Board.

*Harry G. Smith—Direct.*

Mr. Conklin: I don't agree with you, Mr. Maidment.

Pres. Winton: You might change the form of your question.

Mr. Lichtenstein: It is merely a preliminary question. It doesn't mean anything; it is not my intention to produce this witness for the purpose that Mr. Maidment thinks I am producing him for. He is sworn to perform a duty, and that duty is plain under the law. We are all subject to the same law, one person as well as another. 10

Pres. Winton: Proceed with your question and let us see what it is.

Q. Will you turn to the Luckhardt property, please, and tell me how many acres that contains? 20

A. About two and one-half acres, I believe.

Q. 2.63 acres? A. Yes.

Q. And that is the property right on the other side of the cemetery property, on the other side of the road? A. Yes, sir.

Q. What is the assessed valuation of that property? A. \$3,500.

Mr. Maidment: That is a matter of record. 30

Q. Will you turn to the property of Louis Veit; how many acres is there there in that tract? A. About an acre and a half; might be a shade over an acre and a half.

Q. It is an acre and .79 of an acre? A. Yes, sir.

Q. What is the valuation of that property? A. \$1,500.

Q. About \$837 an acre? 40

Mr. Maidment: That is a matter of conclusion.

*Harry G. Smith—Direct.*

Mr. Lichtenstein: I know, but it is a matter of figures, Mr. Maidment.

Q. That is on the other side of the road? A. East.

10 Q. East of the— A. East of the Bulls Ferry Road; west of Dallytown Road.

Q. Will you turn to the Jordan & Appell tract; have you that there? A. Yes, sir.

Q. Can you tell us where that tract is? A. South of the new cemetery.

Q. How many acres are there there? A. Close onto eight acres.

Q. And that is on the upland, too? A. On the upland.

20 Q. On the other side of the cemetery? A. Yes, sir.

Q. And runs from the Dallytown Road to Bulls Ferry Road? A. Yes.

Q. And your assessment on the eight acres is what? A. \$9,000.

Q. Will you turn to the tract of the Cliffside Realty Company—

Mr. Berg: That is over a thousand feet away.

30 Mr. Lichtenstein: It is right in the Borough, and it is better property than this.

Q. How many acres are there in the Cliffside Realty Company tract? A. I should judge around 45 acres.

Q. And your assessment is \$20,000, or \$500 an acre? A. Yes, sir. But there are lots adjoining that, nearer to the cemetery.

40 Q. Turn to the M. A. Chester tract and tell us how many acres there are in that tract? A. About thirty acres.

Q. And the assessment on that is what? A. \$18,750.

*Harry G. Smith—Direct.*

Q. And that is all laid out into lots? A. No, sir.

Q. It is plotted out as lots? A. There is a small piece there that is assessed as lots for more than this acreage ground is assessed at.

Q. Take the Herman Walker tract. A. What tract is that. 10

Q. West of the Bergen Pike, the meadow land. It is on page 2. A. It is on page 3.

Q. How many acres are there there? A. Well now, I believe some of that property was sold, if I am not mistaken.

Q. How many acres have you down there assessed? A. Five acres.

Q. 5.45, isn't it? A. Yes.

Q. What is your assessment on that? A. \$1,200. 20

Q. Or about \$200 an acre? A. Now, whether those figures in this book are correct or not I can't positively say, that is, as to the amount of acreage.

Q. This Herman Walker tract almost adjoins the Meadow land of the Fairview property that we are speaking of here? A. Yes, sir.

Q. Now, will you look at the tract of William Bleuchen, which I understand is one of the most valuable tracts in town? A. Yes. 30

Q. That is one acre? A. Yes, sir.

Q. That is right on the Bulls Ferry Road? A. Yes, sir.

Q. Right near the trolley? A. Yes, sir.

Q. And you have it assessed at \$1500? A. \$1500.

Q. Take the Louis Emmerich property, which is right across the street from that on the Bulls Ferry Road. A. Louis Emmerich estate, you mean?

Q. Yes, the Emmerich estate, that is pretty near an acre? A. Oh, no, nowhere near an acre. 40

*Harry G. Smith—Direct.*

Q. .82 of an acre? A. It isn't really a full lot.

Q. You have it .82 of an acre? A. Yes.

Q. And you have assessed it at \$1500? A. Yes.

Q. And that is right on the cartrack of the Bulls Ferry Road? A. Yes.

10 Q. Right near the Boulevard? A. Well right near Numgesser's hotel.

Q. And right near Anderson Avenue? A. Yes.

Q. Take the Dunham tract which lies along the railroad, meadow land, where the coal yard is. I think that is on page 3. A. Lucien Dunham.

Q. It is about two and one-quarter acres? A. Yes.

Q. 2.26 acres? A. Yes.

Q. And your assessment is \$700? A. Yes.

20 Q. Now take the tract of land that is just to the north of the Fairview tract. A. On the plank road, you mean?

Q. Take this, for instance. Can you find this lot between the Bulls Ferry Road and the turnpike—can you find these tracts (indicating on the map)? Let us get the tract immediately adjoining on the south of Prospect Avenue, between Prospect Avenue and the Fairview Cemetery. A. Well, I will give you some of the property that is listed here; they're lots. You want that property facing on Bulls Ferry Road?

Q. Here is the northerly line of the cemetery (indicating on the map); now then, this whole tract beginning at the cemetery line and going north, immediately adjoining the cemetery.

Mr. Maidment: Adjoining Engle's property.

40 A. Engle is just north of there a short ways. It is about 200 feet north of it, I should judge. The adjoining property doesn't amount to a full acre, and that is assessed at \$800.

*Harry G. Smith—Direct.*

Q. Which piece is that? A. Lindemeyer owns the property.

Q. How much is that? A. .742 of an acre—about three-quarters of an acre. Lindemeyer's property is right next door.

Q. You are assessing that property, which amounts to about three-quarters of an acre, at \$800? A. Yes. 10

Q. Now, let us take the rest of that gore. A. Now I will give you Mr. Henry Engle's property.

Q. Does that touch the land in question? A. No, it adjoins the other half.

Q. Let us go along the cemetery line. A. Well now, they have got some property, I believe, that is laid out that goes onto somebody's else's property. They have got it shown there where it is laid out in lots there where there is no road running through. 20

Q. I understand that, but we want to know how much you are assessing this acreage at. A. I have given you some.

Q. That is only one; there are six more and probably seven more. A. There is Mary Engle and Henry Engle.

Q. Whereabouts is that; is that on the Bulls Ferry Road? A. Yes, sir. 30

Q. What is your acreage there? What are your exact figures? A. Henry Engle has a trifle over an acre of ground there and he is assessed at \$800.

Q. (By Mr. Conklin) How much over an acre? A. 1.016 part of an acre.

Q. How much has the other Engle got? A. Mary Engle hasn't got only about three-quarters of an acre. To be exact, it is .718.

Q. How much is that assessed at? A. \$600.

Q. Take the next one you come to. A. I can give 40

*Harry G. Smith—Direct.*

you across the way, or do you want to keep on the same side?

Q. Keep on the same street. A. Mr. Vail's property. That takes in the corner.

Q. Corner of Prospect and the Bulls Ferry Road?  
10 A. Well, they have an acre of ground there—about an acre. It is .958 of an acre, and it is assessed at \$1200.

Q. That is on the corner of two streets? A. Yes, .958 of an acre. Now do you want to take it on one side of Prospect Avenue or both sides?

Q. If you please, we would like to take in the whole square adjoining the Fairview Cemetery, between Bulls Ferry Road, Prospect Street, and Bergen Turnpike. A. Mr. Fink, he has .31 of an  
20 acre—about a third of an acre—and it is assessed to \$600.

Q. That has its whole frontage on Prospect Avenue? A. Yes, and he has got one lot there .057 of an acre. I think that figures close onto one lot. It is assessed at \$200.

Q. What has Grossklaus got? A. One lot, \$2500. It is about .064 of an acre.

Q. Which piece is that; can you point it out on this map? A. Just about in there (indicating on  
30 map). That property is being cut up now.

Q. The piece that you are assessing is 75 feet front? A. No, sir; it is not.

Q. It has got a house on it? A. No, sir; this property has not. They assess that at \$600.

Q. Those are all on Prospect Avenue? A. Yes, sir.

Q. Now take this 3.12 acres, the piece right next to the corner. A. This large piece here? Well, that faces the Pike. A man by the name of  
40 Marrow owns that piece of property and he has got a little over an acre. I will give you the corner property right down there. Fred Gross-

*Harry G. Smith—Direct.*

klaus has got two here amounting to \$700 and three amounting to \$300. Michael Coyne has got a piece of property alongside of him, 3.12 acres and it is assessed at \$1500. He has got 2.77 feet in front and the rest of it goes back. It is about one-half as wide as it is long.

Q. And that is assessed at how much, did you say? A. \$1500. 10

Q. That is about \$500 an acre? A. Yes.

Q. The Fairview property comes next, doesn't it? A. Yes.

Q. Now, let us take this whole tract right next to it, abutting on the cemetery. A. Mr. Greiner has got four lots there, \$800.

Q. They are cut up into lots and you are assessing them as lots? A. Yes. 20

Q. Where is Henry Denge? A. That is right next to the cemetery, 3.67 acres, \$400 for the three lots.

Q. Now, let us take the inside property, six pieces. A. Now, the inside property, I think some of that property comes to people here that owns that and it is not cut up into lots.

Q. Neither is our cemetery cut up into lots and that is the reason we want to know something about it. Let us find this man that owns that in there and find out how many acres he has got. A. That comes under the Weisman estate. 30

Q. Which is the Weisman estate? A. It is in all that section there (indicating on the map). You are asking me things that are not really there.

By Mr. Winton:

Q. You must have made an assessment of that property? A. Yes.

Q. Now, the point is, to whom did you assess it? A. That is what I say; some of that comes under Mary Engle, and then some comes under Henry Engle, and naturally some of this comes 40

*Harry G. Smith—Direct.*

under this property (indicating) the gentleman that owns this property here.

Q. Can't you tell on here how you went? A. You see some of this acreage might be a little wrong on this book.

10 Q. I know, but can't we get this whole tract in here that adjoins the cemetery? Have you any idea who owns that property? A. That is what I say, a part of that comes under Mr. Engle and part under Mary Engle, and the Vindermore property.

By Mr. Berg:

Q. This house that stands back on Prospect Street? A. That comes under the name of Weisman. That is \$1200.

20 Q. What is the acreage? A. .630 of an acre.

Q. Now, what is the assessment on the piece in the rear of that long piece? A. The difference is this, as I told you before: Whether that would come under the Engle property or under the Vindermore property, or whether the people down at the plank road runs further than what is on that map I don't know.

Q. Didn't you have any idea when you assessed that property who owned it? A. Why certainly.

30 Q. Then why can't you tell us.

Mr. Maidment: I am going to make this objection. I think the witness ought to have a chance to look at the map and see if he can't trace it down.

40 Pres. Winton: We might have the value placed on that entire block. That would control, to a certain extent, the prospective value of this acreage. You can look over your book, taking your time, and within a day or so let us know just what that property is assessed

*Harry G. Smith—Cross.*

at, that is, every foot of land there, provided your book will show it.

Mr. Maidment: He will make up a statement of it, with the number of feet, whatever it may be, so that he can total up the acreage.

Mr. Lichtenstein: What he wants to do is to take each one of them and the rest of it is a matter of figures. Why wouldn't this be a good suggestion, that for the benefit of the Board he just map out a map of his own and write in on each one what he assessed them at, and then we can get at it. And while you are at it, Mr. Smith, we would like to have you furnish us which a copy of it, so that we can see them. 10

The Witness: Do you want me to mail it to you? 20

Mr. Lichtenstein: Yes, if you please. That concludes our testimony with reference to this property.

## Cross Examination by Mr. Maidment:

Q. Mr. Smith, in regard to that Veit property that you have spoken of up there, there is no railroad or trolley connection up there? A. No, sir; there is not. 30

Q. And that is up there in the woods, isn't it? A. Yes.

Q. Now this Cliffside Realty Company—that is practically the same land as this Veit's land? A. Pretty nearly the same. It is good land there.

Q. Now, land across the street from the Cliffside Realty Company that has been laid out in lots and plots, what do you assess that for? A. \$250 or \$300 a lot.

Q. Is that the Chester tract in the valley along the brook? A. In the valley, yes. 40

Q. What do you assess that land at, opposite

*Harry G. Smith—Cross.*

the school—those three acres? I think you said it was worth about \$2,000 an acre; never mind looking at your book. Is that the piece of property directly across the street? A. Right opposite.

10 Q. And is it the same class of property? A. As the cemetery property?

Q. I mean, is it the same class of property; is the ground as good on that side as it is on the side of the cemetery? A. Yes.

Q. Now, do you know the Wendell property? A. Yes.

Q. That is very low land, isn't it? A. Yes.

Q. What is that worth an acre up there; do you know what the Wendell people asked the Board of Education for their property?

20 Mr. Lichtenstein: I object to what they ask. What a man asks for his property and what he ought to get are two different things.

Pres. Winton: Let him tell what the property sold for. The asking price is not always a fair basis of valuation.

A. That property is assessed at \$5,000, and they have about two and three-quarters acres there.

30 Q. That is just above the cemetery, isn't it, and on the Bulls Ferry Road? A. Yes.

Q. And that is low land, isn't it? A. It runs down to a low level.

Q. Now, right opposite the cemetery, the Toole property; that is cut up into lots, isn't it? A. I don't know now.

Q. What is that worth a lot? A. It runs about seven or eight hundred dollars an acre.

Q. With the hill right up against it? A. The hill is against it, yes.

40 Q. Do you, of your own knowledge, know of any sales in that immediate vicinity for the last five or six years, to give us an idea of the value

*Harris G. Smith—Cross.*

of the property? A. No, I couldn't tell you of any.

Q. Do you know of any records of sales of any kind? A. Well, I couldn't tell you of any sales that I know of of that property there, only the cemetery property.

Q. Did you look at the records? 10

Mr. Conklin: The Cemetery Company do not dispute that they are getting \$1.75 a square foot for their property.

Q. This Bleutchen tract, where is that situated?

A. Runs from Nungesser's Hotel.

Q. That is a gore-like? A. Sort of a gore.

Q. Runs to a point? A. Not exactly to a point, no.

Q. At the Hudson County end of it? A. Yes. 20

Q. Doesn't it almost come to a point there? A. No, I wouldn't say it came to a point.

Q. What is the shape of it, a triangle, isn't it?

A. I should judge around that way (indicating) and runs off that way in an oblong.

Q. Right in back of that is Nungesser's swamps, isn't it? A. Yes.

Q. Most of the land just east of the cemetery and Dallytown Road is practically in course of development, isn't it—laid out in lots? A. Yes. 30

Q. And on the Bergen Pike is the land north of the cemetery; is that laid out in small lots and plots in what is known as the Fairview Village?

A. Well, it is laid out in sort of plots there.

Q. There is no acreage there, is there? A. Not to amount to anything.

Q. And that facing the road is practically lots?

A. Yes, and plots.

Q. Now, do you know this land that the Fairview Borough Council bought from Mr. Timms? 40

A. Yes.

*Harry G. Smith—Cross.*

Q. How far north, about, is that from the meadow land of the Fairview Cemetery, or the Fairview Development Company? A. I should judge 5,000 feet.

Q. How many acres did it contain? A. About three acres of ground.

10 Q. And when did they buy it? A. I should judge that was last August, I guess.

Q. What was paid for it? A. \$3,500.

Q. That is all meadow land, isn't it? A. Yes.

Q. Bounded on one side by a creek? A. Yes.

Q. And it is the same character of land that the meadow land of the Cemetery Company? A. Exactly.

20 Q. (By Mr. Conklin.) What is the meadow land adjoining this meadow land of the Cemetery Company, the three acres that was sold for \$3,500, assessed at per acre? A. The Timms land isn't assessed here at all.

Q. (By Mr. Lichtenstein.) Haven't you got your last year's assessment? A. They bought that before that. The Timm property is assessed as \$2,200, about five and three-quarters acres.

Mr. Rutherford H. Walker: Almost six acres.

30 A. (Continuing) 6,068, assessed at \$400.

Q. (By Mr. Conklin.) If you haven't any record of it how do you know it is .68 of an acre?

Mr. Berg: He has nothing under any of them.

A. It is 3.48, at \$3,000.

Q. (By Mr. Berg.) For how many acres? A. 3.48.

40 By Mr. Lichtenstein:

Q. Now, turn to the very next piece of land which borders on that, Mr. Walker's, which isn't

*Harry G. Smith—Cross.*

cemetery land; how much was that? A. Five and one-half acres, assessed at twelve.

Q. How could there be such a discrepancy between these two pieces when they run from the same point to the same point and adjoin each other?

10

Mr. Maidment: I object to that. The discrepancy is a matter for argument; it is not for the witness to testify one way or the other.

A. You know, when they built that road-bed they raised it so high that it naturally depreciates the value of the surrounding property.

Q. (By Mr. Conklin.) Where is this Bush property? A. I think that comes under the name of Pfeifer.

20

Q. (By Mr. Berg.) To whom did you assess it, to Mr. Pfeifer? A. Yes. It is assessed for \$1,000 for about three and one-quarter acres.

Q. Well, how do you account for that if you assessed the Biordette property, which is nearer the viaduct, last year at three thousand and some odd dollars? A. That is, the property adjoining Mr. Walker there?

Q. The viaduct runs right clean across the Fairview Cemetery property? A. Yes.

30

Q. And it is high there? A. Yes.

Q. And it affects that property? A. Yes, sir.

Q. A little bit? A. To smaller extent.

Q. And it effects the Herman Walker property to a greater or less extent? A. Well, that viaduct doesn't run up as far as Walker's property.

Q. It doesn't affect the property very much, does it? A. I shouldn't suppose so.

Q. Why did you assess the Bush property \$1,000 and assess the Walker property \$800?

40

Mr. Berg: I object, unless you qualify him as an expert.

*Harry G. Smith—Cross.*

Mr. Lichtenstein: If you will admit that this gentleman is not an expert and doesn't know the values of real estate, why I haven't anything to say.

10 Mr. Berg: I object to it as incompetent, immaterial and irrelevant. What the Board wants to know is the value of that property.

Pres. Winton: The parties to this appeal come in here and make complaint that there has been an unjust assessment here and ask that that assessment be reduced. There isn't any doubt but what the Herman Walker assessment is too low if this assessment is fair.

20 Q. Now, then, the Bush property is assessed at less than the other property? A. It is assessed pretty nearly the same as the Walker property.

Q. And that is about how much an acre? A. About three and three-quarters acres and assessed at \$1,000.

Q. Now, take the Timm property that was sold to the municipality; that was for a pumping station or a disposal plant, wasn't it? A. Yes, disposal plant.

Q. How many acres were there there? A. Five acres.

30 Q. And that was sold for how much?

Mr. Maidment: Three acres were sold for \$3,500 to the Town and the assessment was \$2,250.

40 Q. Now, Mr. Smith, when you were testifying regarding the property of Wendell were you trying to compare it with this cemetery property that lies around the tunnel with this viaduct there? Is that what you were doing? A. I am not comparing property.

Q. I know, but you were asked whether that

*Colloquy.*

was good property and whether it was worth that much. The Wendell tract is right on the Bulls Ferry Road, isn't it? A. Yes.

Q. You don't compare that property with the cemetery property, do you? A. I am not comparing properties.

Q. And you are not comparing the Veit property with this cemetery property, either, are you? A. I refuse to answer it; I am not an expert.

Mr. Lichtenstein: That is our case.

Pres. Winton: What have the representatives of the Borough got to say?

Mr. Maidment: I have simply this to say on the one proposition, so that we will understand where we are at. I didn't care to go into the question of cemeteries because I considered the record title being in the Fairview Development Company that the acreage property that they held that was unsold was the only subject to be taken up by this Board relative to the assessment, and then the next question would be as to the value of that land.

Pres. Winton: If you lawyers would prefer to furnish us with a brief I will continue your arguments now. It will be just as satisfactory to us.

Mr. Maidment: I was going to suggest that. I will say that our line of defense, to uphold this assessment, would be based on testimony of people that know something about the property down there.

Mr. Lichtenstein: I thought that was all concluded.

Mr. Berg: What was concluded was as to your experts. There are other experts besides those in Hudson County. We will call Mr. Short.

10

20

30

40

*Harlan W. Short—Direct.*

HARLAN W. SHORT, called on behalf of the Borough, being first duly sworn testified as follows:

Direct Examination by Mr. Berg:

10 Q. Where do you reside? A. I live in Bergen County, Morsemere.

Q. What is your business? A. Real estate.

Q. How long have you been in the real estate business? A. About thirteen years.

Q. Have you sold any land in the southern part of Bergen County in the last ten years? A. Yes, quite a good deal.

20 Q. Were you connected with any real estate corporation there? A. With the Columbia Real Estate Company.

Q. Are you familiar with the values of land in the immediate vicinity of this Fairview Cemetery? A. Yes, quite close there.

Q. Do you know the piece of property known as the Mace property? A. I don't believe I do, no; I can't say that I do.

30 Q. Do you know the Luckhardt property? A. I will tell you, the extent of my business has been more principally right there at Hudson Heights, you know, although I have handled property of my own and I was a kind of free lance; in other words, I didn't work for the Columbia people entirely, but I handled for anyone. I had quite a list of stuff.

Q. Are you familiar with the land on the Bulls Ferry Road, just south of the cemetery? A. I tried to buy it.

Mr. Berg: Is there any objection to his qualifications?

40 Mr. Lichtenstein: I think there is a great objection. The Hudson Heights property is

*Harlan W. Short—Cross.*

about 4,000 feet away from this property in question, and the gentleman is very frank about it, and says his efforts were devoted almost exclusively to the work of the Columbia Real Estate Company.

Mr. Berg: He says he didn't work for the Columbia people exclusively, but was a free lance and often went down there to buy property—tried to buy it—in the immediate vicinity of the cemetery; has been thirteen years in the southern part of Bergen County selling land for the real estate company and for himself as a broker. I think he is just as well qualified as the experts you brought from the Town of Union and North Bergen. 10

Mr. Lichtenstein: Well, I would like to test his qualifications, or if you will qualify him yourself. 20

Mr. Maidment: You had better test him on cross examination.

Mr. Lichtenstein: All right.

## Examination by Mr. Lichtenstein:

Q. Mr. Short, according to the map the property that you are identified with is about 1500 feet—at least in a straight line—away from this property? A. Well, possibly it is; I don't know. 30

Q. And that was as to property developed for building purposes? A. Supposed to be. The company agreed to put in the improvements, which I believe afterwards did.

Q. That is the concern that went into the hands of a receiver a short time ago? A. Yes.

Q. Have you ever purchased a piece of property in and around the cemetery? A. No, I have tried to. 40

Q. You mean you have tried for the Develop-

*Harlan W. Short—Direct.*

ment Company? A. No, I have had clients who wanted to buy acreage, and I have bought acreage myself.

Q. But you haven't bought at the cemetery or around there? A. No.

10 Q. And you haven't sold any around there? A. Not right directly.

Q. The nearest you have sold is around the Development Company property. A. Yes, sir; three or four blocks from there.

Q. You are not really familiar with this cemetery property, are you? You haven't gone over it? A. Well, I couldn't say that I am familiar with it.

20 Q. You probably passed it in a carriage? A. Something like that.

Q. That is all.

Mr. Lichtenstein: I claim this gentleman is not qualified to testify as to the values of this property.

Direct Examination Resumed by Mr. Maidment:

Q. You knew the location of the cemetery, Mr. Short? A. Oh, yes.

30 Q. You know the location of the Development Company property? A. You mean the Herman Walker property?

Q. The Fairview Development Company? A. No, I am not familiar with it.

Q. You know the property up and down the Dallytown Road? A. Well, some of it.

40 Pres. Winton: Mr. Maidment, I don't think the gentleman is qualified if he doesn't know where this Fairview Development Company property is.

Mr. Maidment: He is a little bit mixed up on the Fairview Cemetery Company and the Fairview Development Company.

*Harlan W. Short—Direct.*

Q. Look at the map; are you familiar with that property? A. Yes, I have been all over the property.

Q. Have you been over what is marked on this map as the Fairview Cemetery? A. Yes, I have been all over that property. 10

Mr. Lichtenstein: One moment, now—

A. (Continuing) But what I mean is, I couldn't go and tell you the lay of the country and everything like that around there.

Mr. Lichtenstein: Of course not; he couldn't testify as to what the values are.

Q. Are you familiar with the property outside of the Fairview Cemetery? A. Well, now, for instance, I traveled this road (witness indicating Bulls Ferry Road) in an automobile there for eighteen months practically, from my home right down Bulls Ferry Road here. I sold any quantity of property in there (indicating on the map), I suppose fifty to seventy-five parcels of land right around in here (indicating on the map), in the last eight or ten years, and I tried to buy this corner right in there. 20

Q. Adjoining the cemetery? A. Yes, right in there, two or three hundred feet—tried to get some lots in there to build a garage, right on the Bulls Ferry Road. I think a man by the name of Jess owned it. 30

Q. Did you buy it?

Mr. Lichtenstein: No, he says he tried.

A. No, I tried. He asked too much for it, and I couldn't get it.

Q. Are you familiar with the value of the property? 40

*Harlan W. Short—Direct.*

Mr. Lichtenstein: I object to that. The witness has shown that he has no qualifications.

10 Mr. Maidment: Certainly he is. He has sold seventy-two pieces of property up here; he should have some idea of what its value is.

A. Well, I have sold a little unimproved.

Mr. Maidment: Their experts have testified that the land surrounding that is of the same character.

Mr. Lichtenstein: No, sir; they have not; they have testified that the land on the other side is high-grade property.

20 Q. Isn't it the same character as the cemetery property?

Mr. Lichtenstein: I submit to the Board that the witness is not qualified to testify as an expert.

30 A. I have owned property in there, but I never owned any of this down here (indicating on the map) and never got below there—never tried to make any deals, with the exception of this in here.

Mr. Maidment: I am going to ask a vote on this proposition, that I go ahead with the other cemetery proposition, until we can produce the experts that are supposed to be here to-day. There are two or three experts who are very familiar with this property.

40 Pres. Winton: I wouldn't call this gentleman an expert on this property surrounding the property in question. Then your idea is to suspend any further action upon the Development Company for the present?

Mr. Maidment: For the present.

*Colloquy.*

Pres. Winton: And take up the Fairview Heights Cemetery?

Mr. Maidment: And finish that part up.

Pres. Winton: How long an adjournment do you want?

Mr. Maidment: Until Monday or Tuesday. 10

Pres. Winton: We are engaged on Monday; we can give you Tuesday, and if that is satisfactory we will adjourn to that day.

Mr. Maidment: Suppose you make it Wednesday?

Pres. Winton: Then we will adjourn until Wednesday at ten o'clock. Then will the Borough take notice of that fact and produce their witnesses on Wednesday morning at ten o'clock. 20

Mr. Maidment: I will tell you frankly why I want a chance to put on experts. I have some confidence in the testimony that was given by Mr. Nolan, but his experience has been mostly based on property further away. I would like to have his testimony checked up a little bit. So far as Mr. Singer's testimony is concerned, I don't think that is such good testimony. That is my opinion of it. I would like to have a chance now to put in at least one, possibly two men who know that property there, and I know if I cannot produce those witnesses by Wednesday I will know it by Monday morning, which will be ample time to notify this Board and also to notify Mr. Lichtenstein, and you can go on with the other case. 30

Pres. Winton: All right. Now we will take up this Fairview Heights Association appeal on assessment on fifty-two acres, total \$115,000. 40

In the Matter  
of  
The Application of the FAIRVIEW  
HEIGHTS CEMETERY COMPANY  
for the Reduction or Cancellation  
of the Tax Assessment for  
the Year 1913 on its Property  
situate in the Borough of Fair-  
view, County of Bergen and  
State of New Jersey.

On Appeal.

CHARLES SINGER, JR., recalled on behalf of  
the appellant, testified as follows:

20 Direct Examination by Mr. Lichtenstein:

Mr. Lichtenstein: This will be very short,  
because much of the testimony taken in the  
other case will apply to this.

Pres. Winton: Then it is so understood,  
that this is a continuation of the testimony  
in the other case, without swearing the wit-  
ness again?

Mr. Lichtenstein: Yes, sir.

30 Mr. Maidment: You have heard testi-  
mony in the other case which practically  
would fit in with the same testimony in this  
case, and the only question, so far as this  
proposition is concerned, is now purely a  
question of law.

40 Mr. Lichtenstein: There is a little bit more  
to it than that. So far as the Fairview  
Heights Cemetery is concerned, the land is  
worth a great deal less than the other land is,  
and for various reasons, so that the testimo-  
ny in the other case wouldn't entirely apply;

*Colloquy.*

but I will agree to this, that the testimony that was adduced relative to the Fairview Cemetery should be considered a part of the testimony of the Fairview Heights Cemetery Company.

Mr. Berg: They are entirely different. 10  
One part is upon the hill. That is just as far away from the Fairview Cemetery as the Hudson Heights Development is. I think we had better separate them if there is going to be a fight on values. Let us confine ourselves to this particular piece of property.

Pres. Winton: Let me ask a few questions and see if I cannot simplify things: This calls for fifty-two acres; is that correct for the Fairview Cemetery Heights Company? 20

Mr. Lichtenstein: Yes, sir.

Pres. Winton: How much of that is used for burial purposes?

Mr. Lichtenstein: We say it is all used for burial purposes.

Pres. Winton: Suppose that one-quarter of this is not used for burial purposes; the question will then arise, is that one-quarter subject to taxation or not? That is the point. Now, why can't we agree upon that one point? 30

Mr. Lichtenstein: It is admitted on the record by the appellant, that the entire tract of land owned by the Fairview Heights Cemetery Company (which is a corporation organized under the Cemetery Act of this State) consists of sixty acres, and that interments have been actually made in ten of these acres. 40

Pres. Winton: Now, that leaves fifty acres that simply lies there undeveloped?

*Colloquy.*

10 Mr. Lichtenstein: The fifty acres are the cemetery lands in which interments have not yet been made, but which land is used in connection with these other lands in which interments have been made, and that the parties pass back and forth on that land in order to reach the land in which the interments are being made, and that actually the rest of the land is being filled up.

Pres. Winton: I think the Commissioners now understand the lay of the land and the position you take.

Mr. Maidment: Then the only question would be as to the fifty acres.

Pres. Winton: Yes.

20 Mr. Maidment: We contend that the interments only occupy four acres. Mr. Walker you can ascertain the exact number of acres?

Mr. Walker: I can.

Mr. Lichtenstein: We will give you a list of all them and the amount that has been sold.

Q. Mr. Singer, are you familiar with the Fairview Heights Cemetery property? A. I am.

30 Mr. Berg: Will you qualify him as an expert on the property in the vicinity of the Fairview Heights Cemetery property?

Mr. Lichtenstein: Do you think there is any difference between the man's knowledge of the Fairview Development Company property and this?

Mr. Berg: Absolutely.

Mr. Lichtenstein: Do you think it is worth more?

40 Mr. Berg: Positively. I want to examine him as to his qualifications.

Pres. Winton: You can examine him at the proper time.

*Charles Singer, Jr.—Direct.*

Q. What familiarity have you with the Fairview Heights Cemetery property? A. I went over every part of it within a week.

Q. And are you familiar with property around there? A. I am.

Q. And will you state your experience in valuing property in Bergen County? A. As I have testified already, our firm has handled \$600,000 of money in mortgages that needed appraisal in order to place that money for clients of ours in Bergen County, in this immediate vicinity. 10

Q. For investment and reinvestment? A. Yes. I want to say, further, that I have owned property within 400 feet of it, within a year, that I have bought and sold and still own property there.

Q. What other property are you interested in that is near this property? A. No other property that I am interested in except some that I have handled during the year—three different parcels. 20

Q. And are you interested in any other property within a reasonable distance from this property? A. I am interested in our own tract, which is development property.

Q. How far is that away? A. As I have testified before, that may be a mile away from this property, but it is the only active real estate development that is selling lots now in this neighborhood. 30

Q. Is there any difference in the general condition of that land? A. No difference whatever, except that you might say that ours, if you will pardon the expression, is better than this land for development purposes.

Q. Is there any demand for land in the Borough of Fairview at all now? A. No more than there is in any other section of Hudson and Bergen County. The real estate market now is flat, but I 40

*Charles Singer, Jr.—Direct.*

will say this, that the demand for lots is about equal there in Fairview and Hudson, that is the northern part of Hudson.

10 Q. And do you consider that a person who understand the value of the land in the northern part of Hudson County, which adjoins Bergen County, has a familiarity and knowledge of the value of the lands which adjoin it? A. He must have it.

Q. Now then, this Fairview Height Cemetery runs for a very short distance along the Dallytown Road, does it not? A. It does.

Q. And the only street upon which the cemetery property borders for any distance at all is on the Dallytown Road? A. Yes, and it has entrances from Day Avenue.

20 Q. But it doesn't border on any street? A. Nothing more than touches Lincoln Street, here (indicating on the map).

Q. The end of the street? A. Yes.

Q. What is the general nature and character of this land? A. The fifty acres, which is this section right from here (indicating) to here. Everything up east from there is just as nature left it.

30 Q. Just describe the character of the land and the soil. A. The land is studded with large trees; the rock crops out all over the top of it. It has the nature of soil that is full of rock right here (indicating on map). What I mean by that is in spots it is such as all that land on the ridge there. It has a grade of about 15%, sloping down.

Q. Sloping down from the Dallytown Road? A. Yes.

Q. Now then, you have marked out a portion which you refer to as the fifty acres? A. Yes.

40 Q. That portion of fifty acres which is where interments have not been made as yet, only has an entrance from the Dallytown Road? Is not that so? A. Yes, in this section here.

*Charles Singer, Jr.—Direct.*

Q. I am not speaking of the walks between the graves. A. No, this is the main roadway.

Q. In going into the graveyard, or the plots where the graves are at the present time, if these graves were fenced off there wouldn't be any way of getting into the land excepting from Dallytown Road? A. Exactly. 10

Q. And if the Dallytown Road portion would be cut off it would be all inside property? A. Correct.

Q. And would be cut off from the road? A. Yes.

Q. Now, how does the value of the Fairview Heights property compare with the value of the Fairview Cemetery property; is it more valuable or less valuable? A. This property?

Q. Speaking of the Fairview Heights property. A. The Fairview Heights property is better than a portion of the Fairview Development property. 20

Q. What portion? A. The ten acres that I described, right around adjacent to this tunnel.

Q. The meadow property? A. No. This is the tunnel coming in right here in this section right here. I say this is better, because it hasn't that nuisance, and it doesn't go up as abruptly as here.

Q. In other words, a portion of the Heights property is better than that portion of the cemetery property, which borders on the tunnel? A. Yes, this portion. 30

Q. When you say "this portion" you refer to the Fairview cemetery? A. Fairview Development. I would say that is better than this property.

Q. When you say it is better than this property you refer to the Fairview Heights property being less valuable than the Fairview cemetery property? A. Yes.

*Charles Singer, Jr.—Cross.*

Q. Now then, how much would you say that the Fairview Heights Cemetery property was worth an acre? A. Excluding the frontage on streets?

10 Q. Yes, how much? A. I should say it was worth \$600 an acre. I would say that the same rule applies on the Dallytown Road, that a lot 25x100 in this locality here would be worth \$200.

Q. That is, fronting on the road? A. Yes.

Q. And running back 100 feet or 125 feet? A. Yes.

Q. Whereas that in the rear would be worth \$600 an acre? A. \$600 an acre. There are no improvements there; it is just as left by nature.

Cross Examination by Mr. Berg:

20 Q. Now, Mr. Singer, have you bought any acreage within 1,000 feet of this Fairview Heights Cemetery within the last three years? A. No.

Q. Have you sold any acreage within a thousand feet of this cemetery within the last three years? A. No.

30 Q. Have you placed any mortgages for yourself, or acting for anyone else, on acreage within a thousand feet of this cemetery? A. Not on acreage, no; our mortgages were all on developed property.

Q. And within the last three years you haven't placed any mortgages, appraised any acreage, or bought or sold any acreage in the vicinity of a thousand feet of this cemetery, have you? A. I have appraised. I have appraised for Hudson County, on its parkside site.

Q. Is that within a thousand feet? A. Yes.

Q. Where is that? A. Righth at the end of the county line.

*Charles Singer, Jr.—Cross.*

Q. Bergen County line? A. Hudson County.

Q. And you say that is within a thousand feet?

A. Yes.

Q. Here is the Fairview Heights property? A.

Yes.

Q. And here is the park site over here? A. Yes.

Q. Is that as near as you can come? A. Yes. 10

Q. Now that Hudson Heights County park site is on the easterly brow of the hill, isn't it, and east of Bergenline avenue? A. East of Bergenline avenue.

Q. It is not at all of similar nature to this cemetery property, is it? A. No, it is not.

Q. Entirely different, isn't it? A. Better property.

Q. What is the nearest acreage that you have appraised outside of this county park site in the last five years, near this cemetery? A. The cemetery acreage that I have appraised? 20

Q. I mean outside of it? A. All the rest of it has been in Hudson County; but it is further than you say; it is down here maybe three-quarters of a mile.

Q. (By Mr. Conklin). Have you bought or sold any lots near the cemetery grounds? A. Yes, sir.

Q. How far away? A. Right over (witness addressing Mr. Walker). Point out that particular piece of property that I sold you, Rutherford. 30

Mr. Rutherford H. Walker: It is on McKinley Place.

A. (Continuing.) It is right here (indicating on map).

Q. That is all a thousand feet from here, isn't it? A. Yes, it may be.

Q. That is improved property, too, isn't it? A. Yes. 40

*Charles Singer, Jr.—Cross.*

Q. And it is high land? A. Yes.

Q. It is not the same kind of land that this is, is it? A. No.

Q. Is it land similar to the Hudson Heights Realty Company land? A. Yes, sir, and the Columbia Company's land.

10 Q. The land that you appraised on McKinley Place, that you bought or sold on McKinley Place is the same kind of land as the Hudson Heights Realty Company's land and the Columbia? A. Yes.

Q. It is high land upon the hill? A. It is.

Q. How much of that land of the Fairview Heights Cemetery Company is high land? A. Three-quarters of it. It slopes in here and is not more than about 8% grade down here. Here is  
20 where she drops (witness indicating on map). This section from the Fairview Borough line toward the south is higher and better, about 8 or 9% grade. After this it drops 15 to 20%.

Q. Which way, east or west? A. West.

Q. That is all acreage? A. Just as nature left it.

30 Mr. Maidment: I don't think he qualifies as an expert. He has never appraised any property in that vicinity, within a reasonable distance of Fairview Heights Cemetery, to compare that property with property of like nature in the neighborhood.

Mr. Lichtenstein: He says he has a general familiarity with all the property within a reasonable distance around there.

Pres. Winton: Have you any expert testimony to offset this testimony?

40 Mr. Maidment: As to the Fairview Heights Cemetery property we are in the same position as with reference to the other.

Pres. Winton: Why wouldn't it be better

*Charles Singer, Jr.—Cross.*

to allow his testimony to be taken, because he has a general knowledge of it?

Mr. Maidment: Then his testimony can be given with the idea that it is not expert testimony.

Pres. Winton: Go ahead and take his testimony. 10

Mr. Maidment: As an expert?

Pres. Winton: On the simple question of values. It is testimony as far as it goes.

Mr. Maidment: For what it is worth, but not as an expert.

Mr. Lichtenstein: He must have some qualification.

Mr. Maidment: I ask the Board to rule as to whether it shall be admitted as expert testimony or simply as testimony of a man who knows? 20

Mr. Conklin: He is testifying as a man, in my opinion, who is qualified to put his values on that property and on the property in the immediate vicinity.

Mr. Maidment: But not as an expert?

Pres. Winton: You may call it just what you please. He is called to testify as to the value of this property, by virtue of his knowledge of the adjoining property. We will allow you an exception, if you wish it. 30

Mr. Maidment: It doesn't do us any good. I object to it, on the ground that the testimony doesn't show that this witness is qualified as an expert.

Pres. Winton: We have overruled your objection. Now proceed with the testimony.

Mr. Lichtenstein: I have concluded with my testimony. The witness was allowed to go on and give his opinion as to values without objection. 40

*Charles Singer, Jr.—Cross.*

By Pres. Winton:

Q. Mr. Singer, you testified that there was a certain number of acres—I don't think you stated how many, but you said that portion of the land not fronting on the street was worth \$600 an acre; 10 how many acres are there that you have in mind that is worth \$600 an acre out of that fifty acres?  
A. Two acres.

Q. Worth \$600? A. Two acres in lots worth \$200 each.

Q. Then there are 48 acres that is worth \$600 and two acres worth how much? A. Two acres fronting on the street that will be based on \$200 a lot, sixteen lots to the acre. It is all facing the street here. It would be \$3200 if cut up into lots, 20 and that would be \$6400. 48 acres at \$600 an acre would be \$28,800, and 32 lots at \$200 is \$6400, making a total of \$35,200.

Cross Examination by Mr. Berg:

Q. How do you come to place your value at \$600 an acre on that land? A. Because it is inaccessible land. It is far removed from transportation to give it value. It is land, as I told you, on the slope, with a grade of 12 or 15%. If you under- 30 took to develop this land you couldn't develop it with the ordinary grading, sidewalks and curbing for less than \$100 a lot, and then you would have to make some provision in a case like that to hold up your street by putting grading in there, so that it would cost you, easily, \$150 a lot each side, facing the street.

Q. Is that the only basis on which you arrive at the conclusion that it is worth \$600 a lot? A. I arrive at my conclusion, according to my experi- 40 ence in cutting up acreage. I would consider all the elements of value.

*Charles Singer, Jr.—Cross.*

Q. What are your elements of value besides the fact that it slopes, as you say, and it is inaccessible to transportation? A. And the fact that I couldn't get more after spending \$150 a lot to improve it, and if I got only \$200 I wouldn't make any money.

Q. How do you know you couldn't get more than \$200 a lot for it? A. Because I have purchased land and know its value. If you asked me how I would use this land if I were a man in the market with money to invest in acreage, I would take such acreage as I could find and then I would consider the fact that I would have to hold it seven or eight years to sell it. I have investigated thirty companies that have real estate operations and I find that none of those thirty companies dispose of their property in eight years. You must also figure your taxes for at least five years, and the expense of advertising it, which you would have to pay before it is finally disposed of; and then you must compute the commissions you pay for selling the land to the consumer. You have to figure all those things and add the total expense to your property if you want to find out what the lots are going to cost you. The figure I gave you is all I could pay for it, and if I paid \$600 an acre I would be taking a chance. But I don't believe it is worth that chance.

Q. Now, you say you don't believe those lots would be worth more than \$200 a lot? A. No, sir.

Q. In basing that do you compare it with land in the immediate vicinity? A. I compare it with my experience with better land and more accessible land that we have developed ourselves.

Q. Where is this land? A. Our county park land.

*Charles Singer, Jr.—Cross.*

Q. Is that as accessible to the school? A. Yes, everything on it. We have sold lots for \$280 and the land cost \$200.

10 Q. Did you go over this land? A. Every foot of it, so far as I could walk. That land is full of trees, and if you wanted to develop it you would have to take off those trees and that is an expense right there if you are going to develop the land.

Q. (By Mr. Carpenter) Do you mean to say if you were to develop a piece of property the first thing you would do would be to take all the trees down? A. Yes.

20 Q. I have developed some property and that does not accord with my experience. A. What I mean is this. The first thing you would do, if you bought this land for development, would be to see how you could cut it up with the least waste, and after you have done that you would have to take these trees off, or the people who buy the lots has to do that. They will pay you less for it than if the lots are clear. This is rocky ground in here and just as I told you in my previous testimony, when you take a cheap lot for \$250 and encounter rock you are going to run up against an expensive proposition. It costs as much to excavate rock here as the ground is worth.

30 Q. Don't you base your value on the anticipation of what you may get for it after developing it? A. That is what I say.

Q. Don't you think that what the neighboring property is being held at for development within a radius of a thousand feet would have some bearing? A. Much bearing.

40 Q. Exactly. Now, you take, for instance, what is known as the Cliffside Park Realty Company property, which is within a thousand feet; are they selling lots there for two and three hundred dollars? A. This particular section—

*Charles Singer, Jr.—Cross.*

Q. If you know just answer yes or no. A. Walker—

Q. Never mind about Walker. A. Walker is the owner.

Q. Take it at Grantwood; do you know whether they are selling any lots there for two or three hundred dollars? A. I am going to answer the question in this way: The Columbia Investment Company was the biggest operators in this part of the country, and they're bankrupt. You can go and buy of the receiver— 10

Q. Just let me ask you question and you answer them; then we will get along faster. You know the Hudson Heights Realty property? A. Yes.

Q. That is within one or two thousand feet of this property, isn't it? A. Closer than that. 20

Q. Do you know of any lots there that they are selling for \$200 or \$300, on improved streets? A. Dallytown Road is the only improved street they have. There is nothing improved; I don't know how you would figure that.

Q. I will indicate it by pointing out on the map. We will take this tract right opposite here. This is a part of the Hudson Heights and it was acreage at one time? A. Yes.

Q. And it was cut up and developed by the Hudson Heights Realty Company? A. Yes. 30

Q. Do you know of any of these lots, as laid out there, that are selling for \$300 a lot? A. I had one offered me. I can't give you the exact location, but I can identify it. It had a fire on it. That lot had a foundation on it that was worth \$200 and I bought that for \$400.

Q. On Anderson avenue? A. Not Anderson avenue; you asked me about in here, the Dieckman property. 40

*Charles Singer, Jr.—Cross.*

Q. The only Dieckman property that I know of that was burned down was on Anderson avenue.

A. No, that was on the other side.

Q. Was there a fire there? A. Yes.

Q. What, in your opinion, is the value of these lots? A. \$250 would be a good price for inside  
10 lots there.

Q. Do you know of anybody selling them at that figure? A. I am only telling you that I could have bought them for \$400 with a foundation on it.

Q. You have had some experience up there? A. Yes, I have.

Q. Do you know, of your own knowledge, any lot of that Hudson Heights tract that has been sold for \$250? A. No, not of the Hudson Height  
20 tract, but I will tell you this: I bought three lots, within two years, up against the railroad track for \$900.

Q. That was in the Italian settlement where they have the dumps, and where they have no streets? A. No streets? Certainly, the streets are there.

Q. It is right alongside the dump? A. Right next to the railroad. \$900 I paid for it.

Q. \$300 a lot? A. Yes, and they wouldn't compare in value with these. You want to know why  
30 I think it is worth this much: I would rather pay \$300 here than \$250 there.

Q. And you hold that property more valuable than this? A. Yes.

Q. And you are an expert, too, aren't you, Mr. Singer? A. I claim to be.

Q. Now, within one block of this Murray street property isn't it where the dump and the low-land is, and the tunnel smoke? A. Over further  
40 it is, not on my property.

Q. Within a block of it? A. Within a block, but this is right up against the railroad, right

*Charles Singer, Jr.—Re-Direct.*

across the street from me or where my property is. You can see this building here.

Q. Right across from your property on Murray Street is a well-developed property? A. Right in here.

Q. In the Borough of Fairview? A. The post office is over here and right here is my land, and I say right here is finely developed property. 10

Q. Where is your property? A. Right here, and this is the best developed property around there, and this is right up against the railroad.

Pres. Winton: It is a waste of time to discuss that property over there, so why continue the discussion.

Q. You know where Walker Street is here? A. Yes. 20

Q. What are the lots along Walker Street worth, in your estimation? A. \$250.

Q. How wide is that street? A. That street looks to be 50 feet, I guess. 40 feet is the usual suburban development, but I think that is 50 feet.

Re-direct Examination by Mr. Lichtenstein:

Q. This Dieckman property that you spoke of in answer to Mr. Berg's question, you said something about \$400? A. Yes. 30

Q. What was that \$400? \$400 a lot? A. That was a lot 25 x 100, with a stone foundation on it.

Q. \$400 includes the foundation and the excavation and everything else? A. It does.

Q. And was it improved property, too? A. It was.

Q. How much would it cost to improve that land, per lot? A. \$150 a lot.

Q. If it was acreage? A. Yes, exclusive of the foundation. 40

*Harry G. Smith—Direct.*

HARRY G. SMITH, recalled on behalf of the appellant, testified as follows:

Direct Examination by Mr. Lichtenstein:

Q. Mr. Smith, you are the assessor of the Borough of Fairview? A. Yes, sir.

10 Q. And have you produced your field book with you? A. Yes.

Q. Will you please look and tell us how many acres you have assessed the F. Niedler tract as? A. \$800.

Q. How many acres? A. It amounts to an acre and a half.

Q. And that acre and a half— A. (interrupting) It is an acre and .64.

20 Q. And that acre and sixty-four hundredths is taken right out of a strip of Fairview Heights Cemetery and faces on Dallytown Road, doesn't it? A. Yes, sir.

Q. That is less than about \$500 an acre? A. Yes, sir.

Q. That property is just as good as any property in the Fairview Heights Cemetery that faces on Dallytown Road, isn't it? A. Yes.

30 Q. How many acres are there in the Cliffside Realty Company's land on Dallytown Road, which cuts off the Fairview Heights Cemetery property from the road? A. I couldn't say; it is assessed at \$500 an acre.

Q. Along the road? A. Yes.

Q. With a frontage on the Dallytown Road of 883 feet and 124 feet on the side? A. Yes, sir.

By Mr. Conklin:

40 Q. What is the total assessment on the Cliffside Park Realty Company property? A. \$500 an acre.

*Harry G. Smith—Direct.*

Q. The assessment hasn't been separated by reason of the fact that the street runs through it? A. No.

Q. Haven't you assessed this little piece here separately? A. No, it comes in one assessment.

Q. And the Cliffside Park Realty Company has a frontage of 883 feet on the west side of the road and the same frontage on the east side of the road, and has a frontage of the entire length on Cliff Street? A. This property here. There is some property here that is laid out in lots. 10

Q. I understand that, and you have included it all? A. No, not this property.

Q. You haven't? A. No.

Q. How about the property on 7th Street, the whole frontage of the property; haven't you included that all? A. Well, yes, that is right; you have that property up here. 20

Q. So that this Cliffside Park Realty Company property has this long frontage on the east side of the Dallytown Road and on the west side of Dallytown Road, and has the whole frontage on Cliff Street, and the whole frontage on 7th Street, and has the whole frontage on Edgewater Road, hasn't it? A. Yes.

Q. So that it is surrounded on four sides, and you have assessed it at \$500 an acre? A. You see, they have a street cut through there that is really not there. 30

Q. I understand that. Now, take up the Chester tract, which adjoins this Fairview Cemetery, as you recollect, on the north, and tell us about that. There are thirty acres there, are there not? A. Yes, sir.

Q. And that is cut up into lots now? A. Not as I know of. There has been some strips bought there, I believe. 40

*Harry G. Smith—Cross.*

Q. And some houses put up on it? A. I wouldn't say on the Chester property.

Q. Greeley Avenue runs through that property, doesn't it? A. No Greeley Avenue only runs up to a small part of it.

10 Q. Now, then, take this whole tract which immediately adjoins the Fairview Cemetery on two sides and tell me how many acres you have in your book?

A. Thirty acres.

Q. And you have assessed it \$18,750, or about \$600 an acre? A. Yes.

Q. Now then, let us take this piece of property which also adjoins the Fairview Heights Cemetery, belonging to the Biordette estate? A. That is \$3,000.

20 Q. That has 500 feet frontage on Bulls Ferry Road, and it has a frontage on Day Avenue? A. Yes.

Q. And has a frontage on Probst Avenue? A. Yes.

Q. Take the Jordan and Appel strip which adjoins this property on the south; how much do you assess that at an acre? A. Well, it is assessed at \$9,000, eight acres.

Cross examination by Mr. Berg:

30 Q. Now, turn to that Biordette property; is that that swamp land?

Mr. Lichtenstein: No, no.

Mr. Berg: Let the witness answer.

A. No.

Q. Or is it this strip here? A. It is that strip.

Q. Are both of those strips the same amount of acreage? A. I think they are.

By Mr. Lichtenstein:

40 Q. So that you say the Biordette strip is more valuable than the property north of it? A. Yes, sir.

*Charles Singer, Jr.—Direct.*

CHARLES SINGER, Jr., recalled on behalf of the appellant, testified as follows:

By Mr. Lichtenstein:

Q. Mr. Singer, I want to ask you one question I omitted to ask when you were on the stand. Has this property of the Fairview Heights Cemetery, or any of the property around in this locality in the vicinity of the cemetery, increased in value since 1908, in any way? A. That is five years ago; no, I don't think so. 10

By Pres. Winton:

Q. Mr. Singer, on general principles, hasn't every foot of ground in the County of Bergen increased in value since 1908? A. No. 20

Q. Generally? A. No, Senator; I am basing my experience only since 1907. We found in 1907 things went flat and have been flat ever since.

Q. I am thinking of its proximity to New York. A. No, I do believe this, Senator, that there are parts in Bergen County that show a gradual tendency to appreciate in value.

Q. There are localities where I know it has decreased in value, and also other localities where there has been an appreciation? A. Yes, this is true. 30

Q. So that, generally speaking, one offsets the other? A. My experience is, and we have had rather a wide experience since 1908, that it has been flat since 1907.

*Rutherford H. Walker—Direct.*

RUTHERFORD H. WALKER, recalled on behalf of the appellant, testified as follows:

Direct Examination by Mr. Lichtenstein:

10 Q. Mr. Walker, you are connected with the Fairview Heights Cemetery Association? A. Yes, sir.

Q. And that is exclusively a cemetery association, is it? A. Yes, sir.

Mr. Berg: We will admit that they were properly incorporated.

20 Mr. Lichtenstein: You will admit that it was a cemetery association organized under the Cemetery Act, that the proper certificates are on file, that it has been doing business as a cemetery since its organization, and that the total amount subject to the assessment is in the cemetery association?

Mr. Berg: Yes.

Q. Mr. Walker, has any part of this land which is the subject of this assessment been used for any other purpose than for cemetery purposes? A. No.

30 Q. Has all the land been dedicated and set apart for cemetery purposes? A. Yes.

Q. Has any part of it been used for any other purpose whatever? A. No.

Q. And has all the lands belonged to the cemetery association from the time of its organization? A. Yes.

Q. I show you a number of tax bills for the year 1908 and ask you whether these are the assessment bills for that property?

Mr. Berg: I object.

40 Mr. Lichtenstein: I haven't offered them yet.

*Rutherford H. Walker—Direct.*

Q. At that time the property was in the name of your father? A. Yes.

Mr. Conklin: What bearing has that on it?

Mr. Lichtenstein: It is already proven that there has been no increase in the value of the property since the year 1908, and I desire now to show what the assessed value of this property was in the year 1908. I offer these bills in evidence, which show a total valuation of \$36,000 in 1908. 10

Mr. Conklin: Placed by the assessor at that time?

Mr. Lichtenstein: Yes.

Mr. Berg: That wasn't the true value.

Mr. Lichtenstein: Why do you say that? 20

Mr. Berg: We all know in 1908—

The Witness (interrupting): The only reason we didn't take exception was because we knew it was going to be cemetery land and figured on it being exempt.

Q. Mr. Walker, you gave the Borough of Fairview \$20,800, did you not?

Mr. Berg: I object to that as immaterial.

Mr. Lichtenstein: It may and it may not be. Mr. Berg, you know about that transaction? 30

Mr. Berg: No, sir.

Mr. Lichtenstein: Don't you know that we gave the town \$20,800 for the purpose of being invested?

Mr. Berg: Only from hearsay. I was no party to those proceedings whatsoever.

A. That is a fact, nevertheless.

Mr. Lichtenstein: We will prove that fact. 40

*Rutherford H. Walker—Cross.*

Mr. Maidment: I object to your proving anything of that kind, because it is immaterial.

Mr. Conklin: You may put it in on the question of exemption, not to have any bearing upon the value of the property.

10

Mr. Lichtenstein: I am going to be frank with you, gentlemen: It is my present impression that they just threw away that \$20,800. It may be they did it under a misapprehension. And now the Borough is trying to take advantage of it after we were good enough to give them \$20,800, which was figured upon the then value of this property and which, if they had invested as they were required to do, would have forever paid the full taxes on this land.

20

Cross Examination by Mr. Berg:

Q. Mr. Walker, your father was the record title holder prior to the sale of this property to the Cemetery Association? A. Yes.

Q. Your father owned that? A. Yes.

Q. What did your father sell it for?

30

Mr. Lichtenstein: I object. I didn't examine this witness on that. You can prove that by the records if you want to prove anything.

Pres. Winton: What was paid for the land eight years ago would have no bearing on the value of the land to-day.

Q. Has that land increased or decreased in value in the last five years?

40

Mr. Lichtenstein: I object to that as not cross-examination. I haven't asked this witness anything about the value of that piece of land.

*Rutherford H. Walker—Cross.*

Pres. Winton: He may answer that question. For the sake of peace and harmony I think he had better answer it.

A. It has not increased any.

Q. Has it decreased? A. I would say yes.

Q. What per cent.? A. That is hard to say. 10

Q. Ten per cent.? A. From five to ten per cent.

Q. Now the sale of the Fairview Cemetery Company has been the largest sale of any tract of land in that vicinity in the last five years, hasn't it?

A. To my knowledge, yes.

Q. And you say it has decreased? A. Let me correct myself: In that Borough.

Q. Now, what did the Fairview Heights Cemetery Company pay for that? 20

Mr. Lichtenstein: I object to that as being entirely immaterial. How does this man know what his father got for it.

Q. You are the Secretary and Treasurer of the Fairview Cemetery Heights Association? A. Yes.

Q. And you are familiar with its contracts? A. Yes.

Q. Do you know what the Fairview Heights Cemetery Association paid for that land? 30

Mr. Lichtenstein: I object to that as being entirely immaterial. The Board has already ruled that what they paid is no criterion.

Pres. Winton: He is merely asked if he knows.

A. I couldn't answer that offhand anyway, without looking it up.

Q. Does your book show what the Cemetery 40

*Rutherford H. Walker—Cross.*

Heights Association paid for it? A. Father sold it to the company and got some bonds.

Q. What do you mean by "sell"? A. Got a bond issue.

Q. How much bond issue did he get?

10

Mr. Lichtenstein: I object to that as being immaterial. We all know what bond issues are.

Q. You mean the entire bond issue?

Mr. Lichtenstein: I object.

Pres. Winton: I am not clear in my own mind how far we have the right to go into the question as to what the indebtedness is upon that property.

20

Mr. Berg: This is consideration, the price paid for the largest tract that has been sold in the last five years, between men who were great reality financiers.

Mr. Conklin: How much real money was passed? Mr. Walker says, bonds.

Q. Do you know how much real cash was paid in addition to the bonds? A. We had some lands of our own and we bought the A. J. Vogt property and we put them in.

30

Q. How much cash was paid? A. I don't know.

Pres. Winton We will now adjourn to Wednesday, January 28, 1914, at ten o'clock in the forenoon, and in the meantime I desire to look up that question and find out whether we are justified in going into what a piece of property sold for.

40

*Rutherford H. Walker—Direct—Cross.*

County Court House, Hackensack, N. J.  
Wednesday, January 28, 1914, 10 A. M.

The full Board met, pursuant to adjournment.

All counsel present as before.

10

Pres. Winton: Well, gentlemen, proceed with the case.

Mr. Maidment: We want to examine Mr. Walker; he promised to have some data here.

RUTHERFORD H. WALKER, recalled, testified as follows:

Examination by Mr. Lichtenstein:

20

Q. Mr. Walker, do you know, of your own knowledge, what was paid for the land? A. Yes.

Q. And the manner in which it was paid? A. 45 acres were purchased at \$700 an acre.

Q. (By Pres. Winton) What year was that? A. 1905.

Cross Examination by Mr. Berg:

Q. Does that represent the amount paid the Fairview Cemetery Company for the 45 acres of land? A. Yes. 30

Q. And was that consideration paid direct to Herman Walker by the Fairview Heights Cemetery Company? A. That price was paid by my father to A. J. Veit, who owned the land.

Q. But how much did the cemetery company pay for it? A. The same price.

Q. A consideration of \$700 an acre? A. Yes, that is for forty-five acres; there were probably twelve acres extra purchased, at a thousand dollars 40

*Rutherford H. Walker—Direct—Cross.*

an acre. I guess six acres were purchased of the Bush property on Dallytown Road. I am not in a position to give you the exact figures for this reason: Father put in a bill for services rendered, leading up to the formation of this company, and money and things, that he spent in getting this land in shape.

10 Q. As far as you know the Fairview Heights Cemetery Company paid \$700 an acre for 45 acres, and for 12 acres they paid \$1,000 an acre, and for the 6 acres you are not positive about? A. Yes.

Q. And that was paid by the Fairview Heights Cemetery Association as a purchase price for the land? A. Yes, sir.

Q. And that was about five or six years ago? A. No, that was in 1905.

20 Q. There is no meadow land? A. No, there is not an inch of meadow land.

Q. Now, has the Fairview Heights Cemetery Association sold any of this land, Mr. Walker? A. Yes.

Q. Have you any knowledge how much they have sold? A. Between six and seven acres.

Q. To whom did they sell that, do you know? A. That is a Jewish plot.

30 Q. That is the part of the cemetery known as the Mt. Moriah Cemetery? A. Yes.

Q. Did they sell that in acreage? A. Not acreage; they sold that to one society and another. One would buy 20 plots and another would buy more.

Q. Have you a record of the sales? A. Yes.

Q. Do you mind giving us a list of them? A. Do you want a summary?

Q. How many plots were sold? A. 562 plots sold.

40 Q. To how many organizations were they sold? A. Twelve.

*Rutherford H. Walker—Cross.*

Q. Would you give us the names of those associations?

Pres. Winton: I fail to see how we can get any benefit from that. We can take the total.

10

Q. How much acreage does that consist of, those 562 plots? A. That actually sold figures out six acres.

Q. Now, what was the selling price? A. The selling price was \$42,650. It averaged 23.7 cents per square foot. Then you want to deduct commission from that.

Q. Does the Cemetery Association obligate itself to maintain that portion of the cemetery? A. No.

Q. No maintenance charges? A. No.

20

Q. In other words, the societies buying these lots maintain the ground themselves? A. They are supposed to, but as a matter of fact the Cemetery Association is doing it for its own benefit, in keeping it looking right.

Q. Now this six acres you speak of is the land underneath the hill, isn't it? A. A portion of the two acres west of that we gave the Borough a writing that we wouldn't use that on account of adjoining the school. This doesn't include all the land laid out, but this is what is actually sold.

30

Q. Mr. Walker, are you interested in the Fairview Heights Realty Company? A. Never heard of that company.

Q. Fairview Heights Development Company? A. No, never heard of that company.

Q. Hudson Heights Realty Company? A. Yes.

Q. How far from the Cemetery is the land of the Hudson Heights Realty Company? When I speak of the Cemetery I mean the Fairview Heights Cemetery.

40

*Rutherford H. Walker—Cross.*

Mr. Lichtenstein: You remember I haven't qualified Mr. Walker as an expert on that upper land at all. I haven't asked him a single question on that. I don't think you have a right to cross-examine him when I haven't asked him anything about that.

10

Mr. Berg: Well, I will make him my witness.

Q. (Question read by the stenographer) A. Well, the most northerly end of the Hudson Heights Realty Company and the most southerly end of the Fairview Heights Cemetery Company I should say is about 700 feet.

Q. Seven hundred feet? A. Yes.

20 Q. How long ago was the tract of land now known as the Hudson Heights Realty Company purchased by the Hudson Heights Realty Company?

A. About seven years ago.

Q. And that was all acreage at the time, was it not? A. Yes, sir.

Q. Similar to this acreage of the Fairview Heights Cemetery Association? A. Oh, no.

30 Q. Well, was the portion west of the Dallytown Road of the same calibre and character as the land of the Fairview Heights Realty Company? A. A very small portion of it.

Q. The so-called Herman Walker tract is how far from the Fairview Heights Cemetery Association? A. I don't know what tract you are alluding to.

Q. Why, we will say the land known on the map of the property of Herman Walker as lot No. 2. A. That would depend. Take the most easterly end of the land on Dallytown Road and it would be right opposite.

40 Q. How long ago did Mr. Herman Walker purchase that property, do you know? A. I don't.

*Rutherford H. Walker—Cross.*

Q. Do you know about how long ago? A. Possibly fifteen years.

Q. Do you know what those lots are selling for to-day? A. \$300.

Q. That is their average? A. About that.

Q. And that is the land opposite the Fairview Heights Cemetery Association? A. Yes. 10

Q. Lots 25x100? A. Yes, and we were paying 25% commission on the sale of that.

Q. Mr. Walker, that land of the Fairview Heights Cemetery Association facing the Dallytown Road is all developed and laid out in roads? A. The Dallytown Road is there.

Q. And the land that fronts on the Dallytown Road and, we will say, for a distance of about three to four hundred feet west—that land is all graded and laid out, isn't it, with roads? A. 20  
There is a road through it.

Q. Well, the land is graded, isn't it? A. Yes.

Q. And there has been some money spent in developing that land, hasn't there? A. Yes.

Q. How much, if you know, has been spent in grading that land an acre? A. That is hard to say.

Q. Do you know how much money was spent in developing that land facing the Dallytown Road? A. No, because the men weren't employed in that one spot; they went all over developing the lower section and up above. 30

Q. About how many acres, do you judge, was devoted to the top of the hill, fronting on Dallytown Road? A. Possibly five acres. I didn't include, when I gave my testimony, the ten acres that are developed; I never thought of that. That is so much more land laid out that ought to be exempt.

Q. Have there any lots been sold on top of the hill? A. We sold some, but the sale fell through. 40

*Rutherford H. Walker—Cross.*

Q. You haven't passed title to any land up there for cemetery purposes, have you? A. Yes.

Q. On top of the hill? A. Yes.

By Mr. Maidment:

10 Q. This cemetery association buys land and sells it to individual lot holders; that association is strictly an association for the purposes of profit to shareholders? A. The Fairview Heights Cemetery Association is a distinct company from the other.

Q. I mean, the Cemetery Association does that for the purpose of obtaining a profit from the sale of land?

Mr. Lichtenstein: To whom?

20 Mr. Maidment: To the lot owners. The object of the association is for the purpose of obtaining a profit?

Mr. Lichtenstein: That is not so; it can't be.

Mr. Maidment: Well, I am asking him if it isn't.

Mr. Lichtenstein: The record will show what it is. It is a cemetery association organized under the Cemetery Act.

30 Q. Now, isn't it a fact that the Cemetery Associations, both of them, have made a profit and have handed that profit to the stockholders or bondholders on the original investment?

Mr. Conklin: It is quite immaterial. This whole case stands or falls on the practice whether this cemetery company is an organization for profit.

Mr. Lichtenstein: Well, it can't be under the Act, and it isn't.

40 Mr. Maidment: I will withdraw that question and ask this one.

*Rutherford H. Walker—Cross.*

Q. Isn't it a fact that the cemetery associations—both cemetery associations in question—have made a profit? A. The Fairview Heights hasn't made a cent. We are supposed to pay 5% this coming July and we haven't any money for that purpose.

Q. What about the other association? A. The Fairview Development Company hasn't made a cent. The Fairview Cemetery Company has simply paid the interest on their bonds and we have had to borrow money to do that. 10

Q. (By Mr. Lichtenstein.) That is to say, the interest paid on the bonds was not paid out of any profits at all on the sale of land? A. No.

Q. And the bonds are the bonds that were issued in payment for the land? 20

Mr. Berg: That isn't so. Mr. Walker testified that the Fairview Heights did not pay any bonds for this land, but that they bought this land for \$700 an acre for 45 acres and \$1,000 an acre for 12 acres, and six acres he couldn't testify about. Now, they didn't issue any bonds for that.

Mr. Lichtenstein: Yes, they did.

Mr. Berg: Well, I am quoting the witness.

The Witness: The Fairview Heights simply gave bonds to my father and didn't turn over anything. 30

Q. Then it is not true that the Fairview Heights Cemetery Association paid any cash for this land?

A. No.

Q. What did they pay for this land? A. Paid bonds.

Q. What bonds did they pay? A. Ten to one.

Q. Ten bonds, does that mean? A. The value of the bonds is a thousand dollars and it cost a hundred. 40

*Rutherford H. Walker—Cross.*

Q. You issued ten of those bonds for \$100 in money? A. Yes.

Q. And to what amount were the bonds issued? A. \$640,000.

Q. Then the land and the expenses and everything cost about \$64,000? A. Correct.

10 Q. Now, of that land sold, five acres under the hill brought \$42,600; is that right? A. Yes, sir.

Q. And that represents almost the entire—that is, within \$14,000 of the entire—amount that the cemetery association actually paid for the entire sixty acres of land? A. It doesn't do anything of the kind. We paid 15% commission on that and fifty cents a square foot was put aside towards the release of the mortgage on this land.

Q. On the Fairview Heights? A. Yes.

20 Q. That was to pay off this mortgage, however? A. Yes.

Q. But outside of that you had no other expense, excepting 15% commission? A. That is all—and taking care of the land.

Q. Do you take care of the Fairview Heights Cemetery? A. We do, for the appearance of the cemetery.

Q. You have paid out about \$64,000—is that right—for the land? A. Yes.

30 Q. Have you paid out any more money for the maintenance of the cemetery?

Mr. Lichtenstein: He didn't say for the land alone; he said for the expenses, including the expenses of promoting that thing.

Q. Did you pay any more money for expenses since the time this land was purchased, besides this \$64,000? A. Laying out roads.

40 Q. How much was spent for that? A. I'm afraid I can't answer that. I thought I had the books, but I have only the minute book.

*Rutherford H. Walker—Cross.*

Q. Have you any idea how much it cost? A. No, I have not.

Q. It doesn't cost any more than a thousand dollars an acre to lay it out? A. No.

Q. If you laid out 15 acres of land it cost you about \$15,000 more; is that right? A. Yes.

Q. (By Mr. Conklin.) How many acres are actually laid out? A. Upon the hill I said five acres; down below, about ten. 10

Q. (By Pres. Winton.) Now you want to add to that five acres? A. Five acres on top, on the Dallytown Road. There are two acres adjoining the school that we were not to use while the school was there.

Q. Now, have you any idea of what the Fairview Heights Cemetery Association paid besides the \$64,000, since its incorporation, or since it opened this tract of land for cemetery purposes, in any shape, manner or form, or for any purposes? A. No; I have got to answer that the same way that I did the other question: I thought I had the books and on opening it I see it is the minute books. 20

Q. Didn't I understand Mr. Walker, that you were to produce the books? A. I meant to bring them along. I asked my brother to wrap them up and he wrapped up the wrong books. 30

Q. Well, you are selling your acreage to these individual associations and you average 23.7 cents a square foot? A. Yes.

Q. Now, Mr. Walker, how many square feet are there in an acre for cemetery purposes? A. Thirty thousand.

Q. So the cemetery association is getting on an average of \$6,900 an acre for this land as they sell it; is that right? A. About that. Pardon me, let me add to that 15% commission comes off of that. 40

*Rutherford H. Walker—Cross.*

Q. \$6,900 is the amount per acre that the cemetery association gets, less 15% commission? A. That is it.

10 Q. And that is the same land that the cemetery association bought for \$700 an acre, and \$1,000 an acre, and the land that was testified to here by the expert that was worth \$600 an acre; is that right? A. In its raw state, yes.

Q. In its raw state it is worth \$600 an acre, according to your expert? A. Yes.

Q. And \$1,000 would be a very generous amount to allow for developing and the improving of an acre, wouldn't it, Mr. Walker? A. Yes.

20 Q. So, allowing \$1,000 for development and laying out, the land only cost \$1,600? A. No, you have to add to that commission and also for maintaining that and keeping it in order. It is for the cemetery's benefit to keep it in order. It wouldn't do to sell that land and let it grow up in weeds.

Q. Yes, but this land you are selling under the hill to societies you don't maintain? A. We are keeping that in order to-day.

Q. But there is no legal obligation on your part to do so? A. No, but we are doing it, as I say, for the benefit of the cemetery.

30 Q. And any person who bought a bond from the cemetery association at \$100 for a thousand dollar bond, if this interest is paid on the first of July, or whenever it comes due this year, would get 60% interest a year on it, if it were paid? A. "If" is a very good word.

Q. If it is paid? Is that right? A. If it is paid.

40 Q. Up to the present time the Fairview Heights has not paid any interest, has it? A. Not a cent.

*Rutherford H. Walker—Cross.*

Q. But they have received \$40,000 for the sale of land? A. We have paid it all out.

Q. Paid what out? A. We have never received it in full. We are selling those plots on the installment plan, they paying 20% down and then they have got seven years.

Q. What do you mean by the Cemetery Heights Association has paid it all out? A. We have paid out all we have received. They pay 20% down and the other is paid in installments. 10

Q. To whom was that paid? A. For what purposes, for commission discounts, development of the land or what?

Q. Commissions and discount? You are using those terms synonymously? A. Well, I just see I deducted the discount when I gave you that \$42,600. 20

Q. Then the \$42,600 represents the net amount that it has paid? A. Less 15% commission.

Q. What do you mean by discount? A. Discount allowed the association, and from that the commission is paid the agent.

Q. I understood you deducted this? A. I say we did, and 15% comes off of \$42,600.

Q. Now, Mr. Walker, the Fairview Cemetery Association have paid their interest on their bonds, haven't they? A. They have, by borrowing money, as I told you. 30

Q. How much have they been able to borrow? A. Well, they owed fifty thousand at the time of the formation of the Development Company; that was one of the principal reasons for the formation of that company.

Q. How much do they owe to-day? A. Since 1910 the Fairview Development Company assumed the obligation of paying that interest, and they owe about \$12,000. 40

*Rutherford H. Walker—Cross.*

Q. Of the \$50,000? A. Oh, no, the \$50,000 was paid off when the Development Company was formed.

Q. (By Pres. Winton.) That was formed in 1910? A. Yes.

10 Q. And when you formed the Development Company they assumed the obligation of the Heights Association? A. Yes.

Q. And they paid it off out of this \$640,000 of bonds?

Mr. Lichtenstein: Oh, no, they had to borrow money.

Pres. Winton: But they had to give security.

20 A. Don't get the cemeteries mixed up. The \$640,000 is a different proposition from the Fairview Development Company.

Pres. Winton: We are going to get confused, I fear.

Mr. Lichtenstein: If you have finished with the Fairview Heights what is the use of opening it up?

30 Mr. Maidment: Testimony up to the present time has been in the Fairview Heights Cemetery; now, then, we are starting in on the Fairview Cemetery Association.

Mr. Lichtenstein: I thought that was all closed.

Mr. Maidment: The same line as this only applying to the other cemetery.

40 Mr. Lichtenstein: We closed that. The purpose of this meeting to-day was for the purpose of permitting Mr. Berg and Mr. Maidment to bring somebody to testify to the value of the property.

*Rutherford H. Walker—Cross.*

Mr. Maidment: And we are now going on with the Fairview Cemetery Association.

Mr. Lichtenstein: Are we going into that matter?

Mr. Conklin: I don't see any necessity for going back to that case.

Mr. Berg: This is on the theory of profit-making. 10

Pres. Winton: I don't think we have got anything to do with the question whether the cemetery property is a profit-making concern or not. I don't know that we have anything to do with the question whether they make or lose money on it. The question with us is, what is the 40 acres that are not occupied for cemetery purposes worth. If the purpose of your question is to show what this 26 acres is worth and what the prospective profits would be, why then your question would be relevant. 20

Mr. Berg: Our idea is that we can show profit. I don't think they have the right to claim exemption. I want to bring out this evidence to show the profit they make; to show to this Board that it is not a cemetery under the Cemetery Act. While it may have been incorporated under the Cemetery Act it does not live up to its charter, because it is not a cemetery under the Cemetery Act. I think when a cemetery shows a profit it takes away immediately the exemption. That is going to be one of the cardinal features of our brief—the profit-making end of it. I think we have shown to the satisfaction of this Board that the Fairview Heights is making money, while as a matter of bookkeeping they are losing money. 30 40

*Rutherford H. Walker—Cross.*

Q. (By Mr. Conklin.) Mr. Walker, you testified that there was a bond issue of \$640,000; what does that represent in real money? A. \$64,000.

Q. (By Mr. Berg.) How many bonds were issued by the Fairview Cemetery Association? A. The Fairview Cemetery Company issued \$240,000.

10 Q. And how many acres of land did it cover? A. About fifty.

Q. And do you remember the original cost of that land?

Mr. Lichtenstein: What do you mean by "original cost," to whom? To Mr. Walker?

Mr. Berg: No, to the Fairview Cemetery Company.

20 Mr. Lichtenstein: He has already told you \$240,000 in bonds.

Q. Do you know how much actual money passed for the purchase of that land? A. The bonds were turned over to father and that is all I know.

Q. At what value were those turned over? A. At their value, \$240,000.

Q. And that is the same land that you testified was worth about \$40,000 and made an affidavit to that effect? A. I made an affidavit to that effect, but I said later on in my testimony it was worth seven or eight hundred an acre.

30 Q. That would make it less than \$40,000? A. Oh, yes. Well, I simply put that \$40,000 in that affidavit to get the case started.

Q. Do you remember when this bond issue was made; I mean by that, how many years ago? A. In 1902.

Q. Has the Cemetery Association ever defaulted in the interest on those bonds? A. No, because we borrowed money, as I testified to; we would have many a time if it hadn't been for that.

40

*Rutherford H. Walker—Re-Direct.*

Q. And the interest is paid on the par value of the bonds, \$240,000? A. Yes, sir.

Q. From 1902 to date? A. To date.

Q. Now, the rate of interest was 6%, was it not? A. Yes.

Q. How many acres of the Fairview Cemetery Company have been sold? A. Fourteen. 10

Q. And there would be remaining about 35 or 36 acres? A. Oh, out of that there were eleven acres of meadow land that is useless.

Q. Eleven acres of meadow land and about twenty-five acres for cemetery purposes? A. Yes. And I might say in this Fairview Cemetery quite some land adjoining that tunnel is valuable for no purpose. That would come out of the twenty-five. 20

By Mr. Maidment:

Q. Making about twenty-one acres? A. Yes.

Re-direct Examination by Mr. Lichtenstein:

Q. Now, Mr. Walker, let me ask you a few questions: Taking up, first, the Fairview Cemetery Company and the Development Company, when the Fairview Cemetery Company was organized it issued, as a consideration for the purchase of the land, a bond issue of how many thousand, did you say? A. \$240,000. 30

Q. And there was no cash paid? A. No.

Q. And that bond issue went to the person who sold the land to the cemetery company? A. Yes, to my father.

Q. And those bonds were to bear 6% interest? A. Yes, sir.

Q. Was there sufficient money realized from the sale of land of the cemetery to pay the interest on those bonds? A. No. 40

*Rutherford H. Walker—Re-Direct.*

Q. Never was? A. No.

Q. And when you said to Mr. Berg that the interest had been paid on these bonds you also said something about borrowing money? A. Yes.

Q. Now, was the money borrowed for the purpose of paying interest on those bonds? A. Yes.

10 Q. And that was borrowed from the Development Company? A. Yes. Not originally; it was borrowed from the bank.

Q. And then afterwards the Development Company was organized for the purpose of taking care of that interest? A. Yes.

Q. And the unsold land was turned over to the Development Company to secure it? A. Yes.

Q. In the payment of that interest? A. Yes.

20 Q. Now, so far as the Fairview Heights is concerned, no interest, you say, has ever been paid on the bonds? A. No, sir; not a penny. Five years' interest is due July 1st, and I have been going around trying to get the consent of the bondholders to postpone the payment of that interest, because it is very evident that they are not going to get it.

Q. Is there any money available with which to pay the interest? A. None at all.

30 Q. And the money that you receive from time to time from the sale of cemetery lands, what is that used for? A. Why, part of it—I didn't state this before, but we had to borrow money, that is, the Fairview Heights Cemetery Company have had to borrow money at the bank.

Q. For what purpose? A. We put a fence there that cost us \$1,200, that is, an iron fence, and a wooden fence cost us a couple of hundred more, and then the laying out the land.

40 Q. All the money went either directly or indirectly into the cemetery? A. Yes.

*Rutherford H. Walker—Re-Direct.*

Q. Was any part of this money spent for building roads into the cemetery? A. Yes.

Q. So that, as I understand it, all of the money realized from the sale of lands in the Fairview Heights Cemetery went into the land, for the maintenance, and up-keep, and embellishing the land, and for roads, and so forth? A. With the exception of \$100 that I got for salary, for services. 10

Q. Are there any salaries paid to other people? A. I am supposed to get a salary, but that is all I have got.

Q. You are supposed to get a salary, but you never get it? A. No.

Q. So that there hasn't anything been paid out from the moneys realized, except for the up-keep of the premises and the like? A. In one case we gave a deed and we had to pay the Commonwealth Trust Company 50 cents a square foot for the release of that land we got only 23.7 cents. 20

Q. Now, are there roads going through the land leading to that part of the cemetery in which interments are actually being made? A. Yes, sir.

Q. Now, the embellishments of this land and the improvements that have been made on all of this land, the laying out of the roads, etc.—can those be used for any other purposes excepting for cemetery purposes? A. Only the one main driveway. 30

Q. Would these improvements have any value for any other purpose excepting for the cemetery?

A. No, because they are not wide enough for a development.

Q. Now, were all the bonds of the Fairview Heights Cemetery issued in return as a consideration for the sale of the land to the cemetery company for \$640,000? A. And the expenses leading up to it. 40

*Rutherford H. Walker—Re-Direct.*

By Mr. Berg:

Q. What rate of interest does the \$640,000 bonds pay? A. 6%, that is what they are supposed to pay.

By Mr. Maidment:

10

Q. Have these loans that you have spoken of, borrowed by the association for the purpose of paying interest, been paid? A. No.

Q. You still owe that? A. Yes.

Q. What do they amount to? A. The Second National Bank, \$4,000; the First National Bank of Guttenberg is \$5,000.

Q. And that is all the association owes? A. Not for the purpose of paying interest; money  
20 borrowed for the embellishment of that cemetery.

Q. How about the other cemetery? A. The Development Company owes that money. They borrowed \$12,000 I think.

By Mr. Lichtenstein:

Q. The Fairview Development Company, when it was organized, raised how much money? A. \$120,000.

Q. And no part of that has been paid back, has  
30 it? A. No.

Q. And that money was used how? A. As I said, to pay off those notes and for the trust fund we had to create.

Q. And for that stock was issued? A. Yes.

By Mr. Berg:

Q. Mr. Walker, before you sell any piece of property the Fairview Development Company must give a release of that mortgage? A. Yes.

40 Q. How much do they pay to the mortgagee or the trustee for the bondholders for the release?

*Rutherford H. Walker—Re-Direct.*

A. The release says not less than thirty cents a square foot, or one-half.

Q. You have sold about 15 acres of land in Fairview Cemetery for cemetery purposes? A. Fourteen for cemetery and roads, so that if you came down actually to the square feet it wouldn't be that much. 10

Q. And besides this sum which you have paid for releases of mortgage, the Fairview Cemetery and the Fairview Development Company have paid twelve years' interest on \$240,000? A. Yes. But let me add, the Fairview Development Company still owes some money for the release of that land to the trustees.

Q. How much does the Fairview Development Company owe to-day? A. I don't know; I haven't figured that up. 20

By Mr. Lichtenstein:

Q. In other words, it hasn't had enough money to pay? A. It has not had enough money to pay the interest.

By Mr. Maidment:

Q. As a matter of fact, you have paid about \$172,800 interest? A. Yes.

Q. And 30 cents a square foot has been paid for releases? A. Yes; some of it is still due the trustees. 30

Q. But the amount was 30 cents a square foot? A. Yes.

Q. That would make it \$9,000 an acre; is that right, Mr. Walker, that you have paid for releases?

A. Yes, sir.

Q. Now, how many acres have you sold, about, up to last year when you say the release hadn't been paid? A. I said about fourteen. 40

*Rutherford H. Walker—Re-Direct.*

Q. And multiplying 14 by 9 makes \$126,000; is that right? A. Yes.

Q. Now, multiplying 6 by 240, gives \$14,400 every year for interest? A. \$14,400, yes.

10 Q. And you multiply that by 12 years and it gives you \$172,800? A. What are you trying to get at?

Q. Twelve years' interest on \$240,000 at 6%? A. Yes, \$172,800.

Q. And just figure out 14 acres of land at 30 cents a square foot. A. You have got that wrong. The interest is paid out of that release money.

Q. Every time you get a release clause that land is exempt from that mortgage, isn't it? A. Yes.

20 Q. And does that go to the payment of the principal of the bonds? A. Supposed to. The interest is payable first out of that and then the rest is applied towards the payment of the bond issue.

Q. Well, anyway, you have paid \$172,800 in interest? A. Yes.

Case closed.

30

40

*Certificate of Incorporation.*

## CERTIFICATE OF INCORPORATION

OF

## FAIRVIEW DEVELOPMENT COMPANY.

This is to Certify that we, Herman Walker, David W. Lawrence, Frederick W. Bietz and Rutherford H. Walker, do hereby associate ourselves into a corporation under and by virtue of the provisions of an act of the legislature of New Jersey entitled: "An act concerning corporations, Revision of 1896", and the supplements thereto, for the purposes hereinafter mentioned, and to that end we do by this, our certificate, set forth:

*First:* The name of the corporation is: "Fairview development Company".

*Second:* The location of the principal office of the corporation in this State is at No. 72 Twenty-fourth Street, in the town of Guttenberg, in the County of Hudson, and the name of the agent therein, and in charge thereof, upon whom process against the corporation may be served, is Rutherford H. Walker.

*Third:* The objects for which the corporation is formed are to buy, sell, mortgage, lease, develop, improve and deal in real estate and erect and construct buildings and other improvements thereon and deal in mortgages and other real estate securities; said business to be conducted in the Counties of Bergen and Hudson, in the State of New Jersey.

*Fourth:* The amount of the total authorized capital stock of the corporation, is one hundred and twenty thousand dollars, which is divided into twenty-four hundred shares of a par value of fifty dollars each. The amount of capital with which it will commence business is fifty thousand dollars.

*Certificate of Incorporation.*

*Fifth*: The names and post-office addresses of the incorporators, and the number of shares subscribed for by each, are as follows:

	Herman Walker,	Alpine, Bergen Co.	400 sh.
	David W. Lawrence,	Jersey City, N. J.	400 sh.
10	Frederick W. Bietz,	Jersey City, N. J.	100 sh.
	Frederick H. Walker,	Guttenberg, N. J.	100 sh.
			1,000 sh.

The aggregate of the amounts so subscribed is the amount of capital stock with which the company will commence business.

*Sixth*: The existence of the incorporation shall begin on the date of the filing of the certificate in this office of the Secretary of State and shall continue perpetually.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this tenth day of June, A. D., Nineteen Hundred and Ten.

Herman Walker (Seal.)

David W. Lawrence (Seal.)

Frederick W. Bietz (Seal.)

Rutherford H. Walker (Seal.)

30 STATE OF NEW JERSEY, } ss.:  
County of Hudson.

Be it remembered that, on this Tenth day of June, Nineteen hundred and ten, before me, the subscriber, personally appeared Herman Walker, David W. Lawrence, Frederick W. Bietz and Rutherford H. Walker, who, I am satisfied, are the persons named in, and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

Clement K. Corbin,  
Attorney at Law of New Jersey.

*Offer of Exhibit—Development Co.*

Endorsed:

“Received in the Hudson Co., N. J., Clerk’s office June 11, A. D., 1910 and recorded in Clerk’s Record No. — on Page —.

“John F. Crosby,  
“Clerk. 10

“Filed and recorded Jun. 13, 1910,

“S. D. Dickinson,  
“Secretary of State.”

---

**Offer of Fairview Heights Cemetery  
Co.**

To the Honorable Mayor and Councilmen of the  
Borough of Fairview, in the County of Ber- 20  
gen and State of New Jersey.

Gentlemen:

In connection with the application of Fairview Heights Cemetery Company, a corporation duly organized and existing under the laws of the State of New Jersey, bearing even date herewith, directed to your honorable body, asking the consent and approval of your Board to the establishing and location of a new cemetery or place of burial for the dead, in, over and upon all that portion of the Borough of Fairview particularly described in said petition, we desire to submit and offer the following reasons and inducements for the passage of an ordinance by your honorable body granting the consent and approval of your Board to the location and establishing of said cemetery or place of burial for the dead: 30

First: Taking out of the Borough of Fairview as a taxable portion thereof, the lands described in and covered by the application forever releases, 40

*Offer of Exhibit—Development Co.*

discharges and relieves the Borough of Fairview of all future expense, liability and responsibility for making, improving maintaining and taking care of the public thoroughfares, streets and sidewalks, that would be made if the lands covered by said application were improved and laid out in building lots. Making these improvements and maintaining them would be a permanent source of cost and expense to the Borough, and this would be obviated if as aforesaid the lands described in and covered by the application are used for cemetery purposes.

10  
20  
Second: The lands described in and covered by said application if used for cemetery purposes would not need any street lights nor police protection. This would be a further saving to the taxpayers of the Borough.

Third: The cemetery which it is proposed to establish, would be conducted on the most modern lawn system and same would contain only one or two administration edifices of distinguished architectural design. The cemetery would consequently be a veritable and permanent public park, the benefit of which should and would be appreciated and enjoyed by all.

30  
Fourth: In addition to the reasons above set forth, for inducing your honorable Board to grant the necessary consent and approval to the location and establishing of said new cemetery, your applicant further offers and agrees to pay to the Borough of Fairview, in the County of Bergen, the substantial sum of Twenty Thousand Eight Hundred Dollars, on condition that said application be granted and the said Fairview Heights Cemetery Company be permitted to establish and maintain said new cemetery.

40  
Fifth: The said sum of Twenty Thousand Eight Hundred Dollars according to the assessed

*Offer of Exhibit—Development Co.*

valuation for the year One Thousand nine Hundred and six, is the actual and total valuation of the entire lands described in and covered by the said application.

Sixth: The said sum of Twenty Thousand Eight Hundred Dollars, if invested at six per cent. interest by the Borough of Fairview, will annually realize for the Borough Twelve Hundred and Forty-eight Dollars, per year, or nearly twice the sum that the Borough now gets in the way of taxes from the property described in said application. 10

Seventh: Your applicant has been informed and believes that the taxpayers of the Borough of Fairview could save a very considerable amount of money, if the Borough secured the right of way through the property of the Fairview Cemetery Company, for the drainage of the surface water of the upper part of the Borough under the contemplated sewer system, now under consideration, which fixes and determines the route through Fairview Cemetery, not only as the most natural and feasible one, best adapted to carry out the intention of said sewer system, but also as by far the most economical one to be had. 20

If this claim is borne out by the engineer, under whose supervision the sewer is to be constructed, the taxpayers and property owners of the Borough of Fairview would naturally favor any such proposition resulting in a material reduction of taxes and assessments. 30

If your honorable Board will grant our application and assure to this company the right to establish and maintain said new cemetery, your applicant (Fairview Heights Cemetery Company) will in addition to the offers above made also 40

*Offer of Exhibit—Development Co.*

procure and obtain for the Borough of Fairview the permission and consent in writing from Fairview Cemetery Company to run its surface waters that it contemplates draining through the Fairview Cemetery, of using the existing system of sewers, that Fairview Cemetery Company has  
10 provided for the draining of the cemetery property, provided and on condition that the Borough of Fairview secures and protects said Fairview Cemetery Company against any and all damages that may occur or happen by reason of any defective, improper and insufficient construction of its said surface water sewer system.

Your applicant also hereby agrees to procure and obtain permission to allow the Borough of Fairview to lay and maintain in, over, through  
20 and upon property belonging to the Fairview Cemetery Company, located at the west of the Hackensack turnpike, a sewer of such dimensions as may be necessary to carry off or drain the surface water above mentioned, from said Hackensack turnpike to the Bellmans Creek.

Your petitioner also hereby promises and agrees in the event that permission is granted to establish and maintain said new cemetery, to obtain and provide free of charge to the Bor-  
30 ough of Fairview, sufficient land not exceeding one acre located on or near said Bellmans Creek for the use of the Borough of Fairview, to establish and maintain thereon a septic tank or basin.

Your petitioner further offers and agrees to convey free of cost and charge to the Borough of Fairview out of the property described in and covered by said application, the plot of land fifty  
40 (50) feet in width and one hundred (100) feet in depth throughout, for public school purposes, adjoining the present school, known as School No. 2 and which said plot of land the Board of

*Exhibit P-1—Fairview Development Co. Case.*

Education of the Borough of Fairview was heretofore authorized to purchase for Nine hundred Dollars.

Respectfully submitted,

FAIRVIEW HEIGHTS  
CEMETERY COMPANY, 10  
By Lawrence Fagan, President.

Dated at Fairview, N. J., June third, 1908.

Attest:

George E. Dodge Secretary.

---

**Exhibit P-1.**

---

Certificate of Incorporation	}	20
of		
THE FAIRVIEW CEMETERY COMPANY.		

---

This is to certify that we, Herman Walker, Henry J. Gordon and Rutherford H. Walker, of the Town of Guttenberg, in the County of Hudson, and Frederick Walker, of the Town of West New York in said County of Hudson, George E. Dods, Charles H. Sedore and Arthur W. McMullan, of the Borough of Fairview, in the County of Bergen, all in the State of New Jersey, met at Strunck's Hotel, in the Borough of Fairview, in the County of Bergen, being the time and place previously agreed upon by a majority of us of forming an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place for the burial of the dead, and did by the unanimous vote of those present at said meeting proceed to form such association by determining

30

40

*Exhibit P-1—Fairview Development Co. Case.*

upon a corporate name by which the association shall be called and known, and the number of trustees to manage the concerns of the Association, and the place where it is to be located and its business conducted, and the names of the trustees selected for the first year of its existence, and did thereupon proceed to elect by ballot the number of trustees so determined on and the chairman and secretary of the meeting did immediately after the election of trustees divide the trustees by lot in three classes as hereinafter set forth, and therefore we do certify the following particulars:

FIRST.—The name or title by which said Association is to be known in law is the The Fairview Cemetery Company.

SECOND.—The purpose for which the Association is formed is to cause the same to become a corporation under the laws of the State of New Jersey, and to procure and to hold lands to be used exclusively for a cemetery or place for the burial of the dead. The same to be held by said corporation.

THIRD.—The corporation is to be located, and its business conducted in the Borough of Fairview in the County of Bergen, New Jersey.

FOURTH.—The corporation shall be managed by three trustees and the names of the trustees selected for the first year of its existence are given with their residences as follows:

First Class:

Rutherford H. Walker, 72 Hudson Avenue,  
Guttenberg, N. J.

Second Class:

George E. Dods, Tracy & Day Aves., Bor-  
ough of Fairview, Bergen County, N. J.

Third Class:

Herman Walker, 72 Hudson Avenue, Gut-  
tenberg, N. J.

*Exhibit P-1—Fairview Development Co. Case.*

The trustees of the first class shall hold office for one year. The trustees of the second class shall hold office for two years and the trustees of the third class shall hold office for three years, and all successors hereafter elected shall hold office for three years to the end that one class may be elected each year.

10

FIFTH.—The members of the association who have signed this certificate and such other persons as they and their successors shall hereafter elect to be members of the association, and at the annual election of officers every member of the association shall have one vote.

SIXTH.—And the said meeting did also determine that in the future the annual election of Trustees shall be held on the second Tuesday of January.

20

LASTLY.—The location of the principal office in this State is at Tracy and Day Avenues, in the Borough of Fairview, in the County of Bergen. The name of the agent therein and in charge thereof upon whom process against the corporation may be served is George E. Dods.

In witness whereof, we, the said associates, and we, the chairman and secretary of said meeting, have hereunto set our hands and seals the fifteenth day of January, nineteen hundred and one.

30

HERMAN WALKER	(L. S.)
HENRY J. GORDON	(L. S.)
RUTHERFORD H. WALKER	(L. S.)
FREDERICK WALKER	(L. S.)
GEORGE E. DODS	(L. S.)
CHARLES H. SEDORE	(L. S.)
ARTHUR W. McMILLAN	(L. S.)
HERMAN WALKER	(L. S.)

Chairman

40

GEORGE E. DODS,	(L. S.)
-----------------	---------

Secretary.

Sealed in presence of  
Albert A. Marks.

(10c. revenue stamp cancelled.)

*Exhibit P-1—Fairview Development Co. Case.*

State of New Jersey, } ss.:  
 County of Bergen, }

10 Be it remembered, that on this fifteenth day of January, 1901, before me, the subscriber, a Commissioner of Deeds in and for the County of Hudson, N. J., personally appeared Herman Walker, Henry J. Gordon, Rutherford H. Walker, Frederick Walker, George E. Dods, Charles H. Sedore, and Arthur McMillan, who, I am satisfied are seven of the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

20

ALBERT A. MARKS,  
 Commissioner of Deeds.

State of New Jersey, } ss.:  
 County of Bergen, }

30 Be it remembered that on this fifteenth day of January, 1901, before me, the subscriber, a Commissioner of Deeds in and for the County of Hudson, N. J., personally appeared Herman Walker, Chairman, and George E. Dods, Secretary of the within described corporation, who, I am satisfied are two of the persons named in and who executed the foregoing certificate and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

ALBERT A. MARKS,  
 Commissioner of Deeds.

40 Received in the Office and recorded January 15th, 1901, at 12 M.

JOHN R. RAMSEY,  
 Clerk.

*Exhibit P-1—Fairview Development Co. Case.*

State of New Jersey, } ss.:  
 County of Bergen, }

I, Charles F. Thompson, Clerk of the County of Bergen, in the State of New Jersey, and also Clerk of the Circuit and Common Pleas Courts, in and for said County (Courts of Record), do hereby certify that I have compared the copy of the Certificate of Incorporation hereto annexed, with the original record thereof in Liber 3 of Certificate of Incorporations, at pages 67, &c., &c., in my office at Hackensack in said County, and that the same is a true copy thereof, and of the whole of such original record. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts and County, at Hackensack, aforesaid this Twenty-first day of January, one thousand nine hundred and fourteen. 20

(Court's Seal)

CHARLES F. THOMPSON,  
 Clerk.

By W. S. DOREMUS,  
 Deputy Clerk. 30

**Exhibit P-2.****Deed, Fairview Cemetery Co. to Fairview Development Co.**

10 Dated Oct. 1, 1910. Ack'd. Dec. 8, 1910, Rec. Dec. 15, 1910. Liber 769, p. 670. Conveys all the property of the Fairview Cemetery Company excepting certain lots theretofore sold by the Cemetery Company, part to the Hudson River Railroad and Terminal Company and part for burial plots; the premises conveyed to the Development Company include the premises in question.

**Exhibit P-3.**

AGREEMENT DEC. 8, 1910.

BETWEEN

20 FAIRVIEW DEVELOPMENT CO. AND FAIRVIEW CEMETERY CO.

THIS AGREEMENT, Made this Eighth day of December, Nineteen hundred and Ten, between the Fairview Development Company, a corporation of the State of New Jersey, party of the first part, and The Fairview Cemetery Company, a corporation of said State, party of the second part,

30 WITNESSETH: *Whereas*, in pursuance of a preamble and resolutions passed by the Board of Trustees of the Cemetery Company, by and with the concurrence of the bondholders and plot-owners given at a meeting held by them, the Fairview Cemetery Company has, by deed dated the first day of October, Nineteen hundred and ten, conveyed to the Fairview Development Company, all the real estate which it owns, in fee, not heretofore sold for burial purposes, for a consideration of Three Hundred and Sixty Thousand Dollars, whereof One Hundred and Twenty Thousand

40

*Exhibit P-3—Fairview Development Co. Case.*

Dollars has been paid in cash, and the residue by the assumption of the existing mortgage of Two Hundred and Forty Thousand Dollars, which sum of One Hundred and Twenty Thousand Dollars is to be immediately devoted to the payment of the entire floating debt of the Cemetery Company and the establishment of a fund of not less than Sixty Thousand Dollars for providing income to care for the cemetery property. 10

*Now, Therefore,* for the purpose of carrying out the terms and plan of the aforesaid preamble and resolutions, it is agreed between the parties as follows:

The Cemetery Company may continue, from time to time, to sell burial plots for actual burial purposes at prices to be fixed by them, but in no case to be less than One Dollar and seventy-five cents per square foot, and receive the purchase price therefor, and upon making such sales they shall forthwith report the same at the end of each month to the Development Company, with the prices therefor, and shall return and pay therewith to the Development Company sixty per cent. (60%) of the gross price for which said lots may be respectively sold, and the Development Company shall forthwith, upon receipt of said moneys, obtain releases from the mortgages upon said property of the lots so sold, and will execute a deed of said lots back to the Cemetery Company, to the end that the Cemetery Company may deliver its deed for the said plots to the buyers thereof, from time to time as occasion may require free and released from all incumbrances. 20 30

In testimony whereof, the parties hereto have caused their respective common seals to be hereunto affixed, and duly attested by their respective 40

*Exhibit P-3—Fairview Development Co. Case.*

Presidents and Secretaries, the day and year first above written.

THE FAIRVIEW DEVELOPMENT COMPANY,  
By David W. Lawrence, President.

(Seal.) Attest:

10 Frederick W. Bietz, Secretary.

THE FAIRVIEW CEMETERY COMPANY,  
By Herman Walker, President.

Signed, sealed and delivered in the presence of  
Clarence F. Walker, as &c., Fairview Cemetery  
Company.

Attest:

George E. Dods, Secretary.

20 STATE OF NEW JERSEY, }  
County of Hudson. } ss.:

Be it remembered that, on this ninth day of  
December, in the year Nineteen Hundred and Ten,  
before me, the subscriber, a Master in Chancery  
of New Jersey, personally appeared Frederick W.  
Bietz, known to me to be the Secretary of the  
Fairview Development Company, a corporation,  
within named, who being by me duly sworn on his  
oath said: that he is such secretary, and that he  
well knows the common seal of said corporation,  
30 and that the seal affixed to the within agreement  
in such common seal, and was thereto affixed by  
David W. Lawrence, the President of said corpo-  
ration, and that the said agreement was, by the  
said President also signed and delivered as and  
for the voluntary act and deed of said corpora-  
tion, in the presence of said deponent, who there-  
upon subscribed his name thereto as attesting  
witness.

Frederick W. Bietz.

40 Sworn and subscribed to before me  
at Hoboken, N. J., the date aforesaid.

Rudolph F. Rabe,  
Master in Chancery of New Jersey.

*Exhibit P-3—Fairview Development Co. Case.*

STATE OF NEW JERSEY, }  
 County of Bergen. } ss.:

Be it remembered that on this eighth day of December, in the year One Thousand Nine hundred and Ten, before me, the subscriber, an attorney at law of the State of New Jersey personally appeared George E. Dods, known to me to be the Secretary of the Fairview Cemetery Company, a corporation, within named, who being by me duly sworn on his oath said: that he is such Secretary, and that he well knows the common seal of said corporation, and that the seal affixed to the within agreement is such common seal, and was thereto affixed by Herman Walker, the President of said corporation, and that the said agreement was, by the said President, also signed and delivered as and for the voluntary act and deed of said corporation in the presence of said deponent, who thereupon subscribed his name thereto as attesting witness.

George E. Dods.

Subscribed and sworn to before me at Fairview, N. J., the date aforesaid.

Clarence F. Walker,  
 Attorney at law of New Jersey. 30

Notice.— Cemetery Co. seal is omitted in copy sent us. \_\_\_\_\_

**Exhibit P-4.**Certificate of Incorporation  
of  
The Fairview Heights Cemetery Company.

Dated Sept. 18, 1906.

- 10 This is to certify that we, Frederick Walker,  
William O. Ambrusser, Adolph E. Brehm, George  
E. Doll, Lawrence Fagen, Henry J. Gorden, James  
T. Lillis, George B. Bergkamp and James Usher,  
all in the State of New Jersey, met at William  
Luckhardt's office in the Borough of Fairview in  
the County of Bergen, being the time and place  
previously agreed upon by a majority of us of form-  
ing an association for the purpose of procuring  
and holding lands to be used exclusively for a  
20 cemetery or place for the burial of the dead, and  
did, by the unanimous vote of those present at said  
meeting, proceed to form such association by deter-  
mining upon a corporate name by which the asso-  
ciation shall be called and known and the number  
of trustees to manage the concerns of the associa-  
tion and the place where it is to be located and its  
business conducted and the names of the trustees  
selected for the first year of its existence. And  
30 did thereupon proceed to elect by ballot the num-  
ber of trustees so determined on and the chairman  
and secretary of the meeting did immediately after  
the election of trustees divide the trustees by lot  
in three classes as hereinafter set forth and there-  
fore we do certify the following particulars:
- First: The name or title by which said asso-  
ciation is to be known in law is The Fairview  
Heights Cemetery Company.
- Second: The purpose for which the association  
40 is formed is to cause the same to become a cor-

*Exhibit P-4—Fairview Development Co. Case.*

poration under the laws of the State of New Jersey and to procure and to hold lands to be used exclusively for a cemetery or place for the burial of the dead. The same to be held by said corporation.

Third: The corporation is to be located and its business conducted in the Borough of Fairview in the County of Bergen, New Jersey. 10

Fourth: The corporation shall be managed by nine trustees and the names of the trustees selected for the first year of its existence are given with their residences as follows:

## First Class.

George E. Dodd, Borough of Fairview, N. J.

James T. Lillis, Jersey City, N. J.

Frederick Walker, West New York, N. J. 20

## Second Class.

Lawrence Fagan, Hoboken, N. J.

George B. Berg Kamp, West Hoboken, N. J.

Adolph G. Brehm, Jersey City, N. J.

## Third Class.

James Usher, Town of Union, N. J.

Henry J. Gordon, Guttenberg, N. J.

William O. Ambruster, Town of Union, N. J.

The trustees of the first class shall hold office for one year. The trustees of the second class shall hold office for two years and the trustees of the third class shall hold office for three years and all successors hereafter elected shall hold office for three years to the end that one class may be elected each year. 30

Fifth: The members of the association who have signed this certificate and such other persons as they and their successors shall hereafter elect to be members of the association and at the annual election of officers every member of the association shall have one vote. 40

*Exhibit P-4—Fairview Development Co. Case.*

Sixth: And the said meeting did also determine that in the future the annual election of trustees shall be held on the third Tuesday of September in each year.

10 Lastly: The location of the principal office in this state is at the office of George E. Dods in the Borough of Fairview in the County of Bergen. The name of the agent therein and in charge thereof upon whom process against the corporation may be served is George E. Dods, of the Borough of Fairview in the County of Bergen and State of New Jersey.

20 IN WITNESS WHEREOF, We, the said associates and we, the chairman and secretary of said meeting, have hereunto set our hands and seals the eighteenth day of September, nineteen hundred and six.

	Lawrence Fagan	(L. S.)
	George E. Dods	(L. S.)
	Adolph E. Brehm	(L. S.)
	Henry J. Gordon	(L. S.)
	James Usher	(L. S.)
	Jas. T. Lillis	(L. S.)
	Geo. B. Berg Kamp	(L. S.)
	Wm. O. Ambruster	(L. S.)
30	Fred Walker	(L. S.)
	Lawrence Fagan, Chairman	(L. S.)
	George C. Dods, Secretary	(L. S.)

Signed and sealed  
in the presence of  
Clarence F. Walker.

*Exhibit P-4—Fairview Development Co. Case.*

State of New Jersey, }  
 County of Bergen, } ss.:

Be it remembered that on this eighteenth day of September, 1906, before me, the subscriber, an attorney at law of the State of New Jersey, personally appeared Lawrence Fagan, George E. Dods, Adolph E. Brehm, Henry J. Gordon, James Usher, James T. Lillis, George B. Berg Kamp, William O. Ambruster and Frederick Walker who, I am satisfied, are all of the persons named in and who executed the foregoing certificate; and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed. 10

Clarence F. Walker, 20  
 Attorney at Law of New Jersey.

State of New Jersey, }  
 County of Bergen, } ss.:

Be it remembered that on this eighteenth day of September, 1906, before me, the subscriber, an attorney at law of the State of New Jersey, personally appeared Lawrence Fagan, Chairman and George E. Dods, Secretary, who, I am satisfied, are the persons named as the Chairman and Secretary, respectively, in and who executed the foregoing certificate and I having first made known to them the contents thereof they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed. 30

Clarence F. Walker,  
 Attorney at Law of New Jersey.

Received in the office and recorded September 21, 1906, at 4 P. M. 40

John R. Ramsey,  
 Clerk.

*Exhibit P-4—Fairview Development Co. Case.*

State of New Jersey, } ss. :  
 County of Bergen, }

10 I, Charles F. Thompson, Clerk of the County of Bergen in the State of New Jersey, and also Clerk of the Circuit and Common Pleas Courts, in and for said County (Courts of Record), do hereby certify that I have compared the copy of the Certificate of Incorporation hereto annexed with the original record thereof in Liber No. 4 of Incorporations at pages 581, &c., in my office at Hackensack, in said County, and that the same is a true copy thereof, and of the whole of such original record.

20 (Court's Seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts and County, at Hackensack aforesaid, this twenty-first day of January, one thousand nine hundred and fourteen.

CHARLES F. THOMPSON,  
 Clerk.

By W. S. Doremus,  
 Dep. Clerk.

30

40

**Reasons.**

## NEW JERSEY SUPREME COURT.

FAIRVIEW DEVELOPMENT COM-  
PANY,

Prosecutor,

vs.

THOMAS FAY, Collector of the  
Borough of Fairview, Bergen  
County, New Jersey,  
Respondent.

Certiorari.

10

On

The above named prosecutor, Fairview Development Company, gives the following reasons for setting aside the assessment of taxes and the judgment of the Bergen County Board of Taxation thereon, brought before this honorable court by the writ of certiorari.

20

1. Because the assessment so made is upon cemetery lands and property in which interments had been and are still being made, and which said lands are dedicated to the purposes of a cemetery, and had been and are actually being used for cemetery purposes and for cemetery purposes only, and therefore are exempt from taxation under and by virtue of the laws of the State of New Jersey.

30

2. Because all of the land and property of said Fairview Development Company is exempt from all public taxes, rates and assessments by reason of the formation and incorporation of said company and the acquisition and holding of its lands and property under and by virtue of an act of the legislature of the State of New Jersey, entitled "An Act to Authorize the Incorporation of Rural Cemetery Associations and Regulate

40

*Reasons—Fairview Development Company Case.*

Cemeteries (Rev. 1877)" and the acts supplementary thereto and amendatory thereof.

10 3. Because the Mayor and Council, and the Board of Health of said Borough of Fairview, prior to the location of said cemetery lands so assessed, gave and granted their consent and approval to said Fairview Development Company for the locating and establishing of such cemetery or burying grounds; which consent and approval have remained in full force and effect since the time of the granting thereof.

4. Because the said Fairview Development Company has in all things complied with the various acts of the legislature of the State of New Jersey for the purposes of using said lands and property for cemetery purposes.

20 5. Because said assessment is illegal and void in that the rate thereof was without authority raised by the Assessor of the Borough of Fairview, over the rate fixed and certified by the County Board of Taxation.

6. Because said assessment is improperly and illegally based on a rate which would yield a sum greater than required to be raised by taxation by said Borough.

30 7. Because there was no evidence before said Bergen County Board of Taxation which sustains or justifies its said judgment.

8. Because said judgment of the Bergen County Board of Taxation affirmed said assessments of taxes, whereas the same should have been set aside, annulled and cancelled.

40 9. Because said assessment of taxes and the judgment of said Bergen County Board of Taxation thereon, are for some or all of the reasons above stated, and for other reasons, wrongful, erroneous, unconstitutional and illegal.

WELLER & LICHTENSTEIN,  
Attorneys for Prosecutor.

**Reasons.**

## NEW JERSEY SUPREME COURT.

FAIRVIEW HEIGHTS CEMETERY  
COMPANY,

Prosecutor,

vs.

THOMAS FAY, Collector of the  
Borough of Fairview, Bergen  
County, New Jersey,  
Respondent.

On  
Certiorari.

10

The above-named prosecutor, Fairview Heights Cemetery Company, gives the following reasons for setting aside the assessment of taxes, and the judgment of the Bergen County Board of taxation thereon, brought before this honorable court by the writ of certiorari in this matter:

20

1. Because the assessment so made is upon cemetery lands and property in which interments had been and are still being made, and which said lands were dedicated to the purposes of a cemetery, and had been and are actually being used for cemetery purposes and for cemetery purposes only, and therefore are exempt from taxation under and by virtue of the laws of the State of New Jersey.

30

2. Because all of the land and property of said Fairview Heights Cemetery Company is exempt from all public taxes, rates and assessments by reasons of the formation and incorporation of said company and the acquisition and holding of its lands and property under and by virtue of an act of the Legislature of the State of New Jersey,

40

*Reasons—Fairview H'ts Cemetery Company Case.*

entitled "An Act to Authorize the Incorporation of Rural Cemetery Associations and Regulate Cemeteries (Rev. 1877)," and the acts supplementary thereto and amendatory thereof.

10 3. Because the Borough of Fairview, to insure itself against loss by reason of the statutory immunity of cemetery property from taxation, required and accepted a deposit of \$20,800 from said Fairview Heights Cemetery Company, with the understanding that said sum was to be invested, and the income thereof to be used by the said Borough, as a condition to the granting of the franchise to said cemetery company for the location and establishment of a cemetery within the limits of said borough.

20 4. Because said Borough of Fairview has been fully paid and satisfied for any and all taxes assessable against the lands and property of said Fairview Heights Cemetery Company by its demand and acceptance, prior to the year 1913, of a deposit of \$20,800 from said company, with the understanding that said sum was to be invested and the annual income thereof to be used by said Borough in payment of all public taxes, rates or assessments which might thereafter be assessable and grow due against said lands and property.

30 5. Because the Mayor and Council, and the Board of Health of said Borough of Fairview, prior to the location of said cemetery lands so assessed, gave and granted their consent and approval to said Fairview Heights Cemetery Company for the locating and establishing of such cemetery or burying grounds; which consent and approval have remained in full force and effect since the time of the granting thereof.

40

*Reasons—Fairview H'ts Cemetery Company Case.*

6. Because the said Fairview Heights Cemetery Company has in all things complied with the various acts of the Legislature of the State of New Jersey for the purposes of using said lands and property for cemetery purposes.

7. Because there was no evidence before said Bergen County Board of Taxation which sustains or justifies its said judgment. 10

8. Because said judgment of the Bergen County Board of Taxation affirmed said assessment of taxes, whereas the same should have been set aside, annulled and cancelled.

9. Because said assessment is illegal and void in that the rate thereof was arbitrarily and without authority raised by the Assessor of the Borough of Fairview, over the rate fixed and certified by the County Board of Taxation. 20

10. Because said assessment is improperly and illegally based on a rate which would yield a sum greater than required to be raised by taxation by said Borough.

11. Because said assessment of taxes and the judgment of the said Bergen County Board of Taxation thereon, are for some or all reasons above stated, and for other reasons, wrongful, erroneous, unconstitutional and illegal. 30

WELLER & LICHTENSTEIN,  
Attorneys for Prosecutor.

**Stipulation.**

## NEW JERSEY SUPREME COURT.

10	FAIRVIEW HEIGHTS CEMETERY COMPANY, Prosecutor, vs. THOMAS FAY, Collector of the Borough of Fairview, in the County of Bergen, Respondent.	On Certiorari.
20	FAIRVIEW DEVELOPMENT COM- PANY, Prosecutor, vs. THOMAS FAY, Collector of the Borough of Fairview, in the County of Bergen, Respondent.	

It is hereby stipulated and agreed by and between the parties in the above matter.

30 1. That no point shall be made on the argument as to the question of the legality or illegality of the rate at which the assessment upon the property of prosecutor was made.

40 2. That no point shall be made as to the payment by the prosecutor to said borough of the sum of \$20,800 upon the granting by the borough authorities of the consent to the location of said cemetery. Nothing in this stipulation, however, shall prevent said prosecutor from raising said

*Stipulation.*

point upon any proceedings affecting taxation of said premises subsequent to the tax levied for the year 1915.

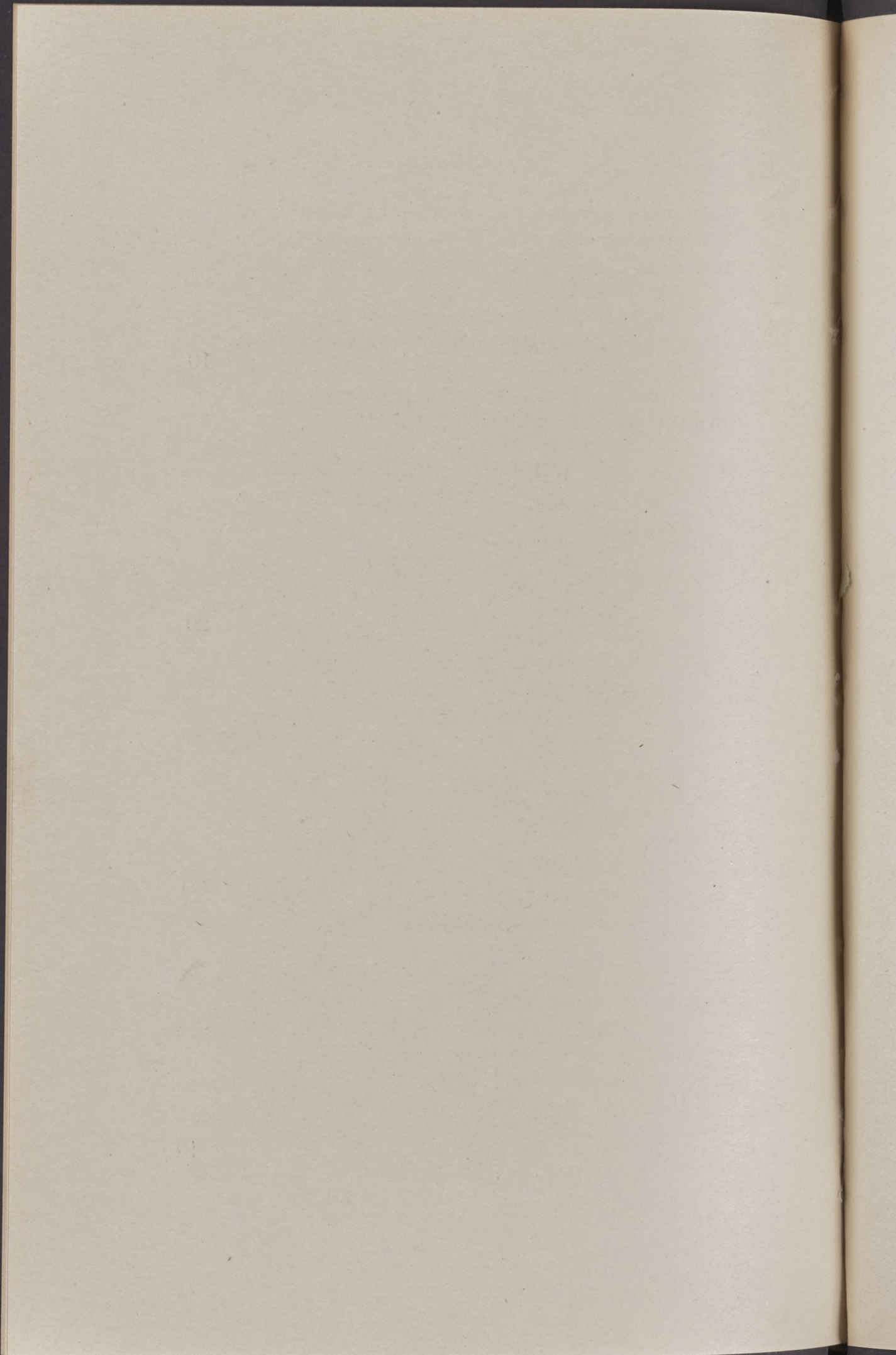
3. The only point to be argued in the present proceedings is whether or not the company is exempt from taxation to the full extent of the land owned by it or whether it is only exempt as to a part thereof, and if so, what part? 10

WELLER & LICHTENSTEIN,  
Attorneys of Prosecutor.

Dated, February 21, 1917.

EDWARDS & SMITH,  
Attorneys of Respondent. 20

30



## New Jersey Court of Errors and Appeals

10

---

FAIRVIEW HEIGHTS CEMETERY  
COMPANY, a corporation,  
Prosecutor-Appellant,

against

THOMAS FAY, Collector of the  
Borough of Fairview, Bergen  
County, New Jersey,  
Defendant-Respondent.

---

FAIRVIEW DEVELOPMENT COM-  
PANY, a corporation,  
Prosecutor-Appellant,

against

THOMAS FAY, Collector of the  
Borough of Fairview, Bergen  
County, New Jersey,  
Defendant-Respondent.

---

On Appeal.

On Certiorari. 20

Taxes of 1913.

### BRIEF OF APPELLANT.

30

The only point to be argued in the present proceedings is, whether or not the above prosecutors are exempt from taxation to the full extent of the land owned by them, or, whether they are only exempt as to a part thereof, and if so, what part,—as appears by paragraph 3 of a stipulation entered into between the attorneys of the respective parties (Record, page 184).

40

Although we shall argue these cases in one brief, we shall take them up separately.

### **Fairview Heights Cemetery Company.**

10 This matter comes before the Court on a writ of certiorari allowed herein for the review of an assessment of taxes made by the Assessor of Taxes of the Borough of Fairview, Bergen County, New Jersey, for the year 1913, on lands of the prosecutor, situate in said Borough of Fairview and comprising approximately fifty acres.

The Fairview Heights Cemetery Company, the prosecutor herein, is a corporation, organized under the Cemetery Act of this State, on September 21st, 1906.

### 20 **Evolution of the Rural Cemetery Act.**

The Act of 1851, entitled "An act authorizing the incorporation of rural cemetery associations" (P. L., 1891, page 254), was the first act authorizing the formation of cemetery associations in this State.

30 Under Section 10 of said act it is provided "The cemetery lands and property of any association *formed pursuant to this act* shall be exempt from all public taxes, rates and assessments \* \* \*."

40 The aforementioned act of 1851 was repealed on April 9, 1875 (Rev. of N. J., 1877, Vol. II, Appendix B, page 1396, #465), and on the same day there was enacted a new cemetery act entitled "An Act to authorize the incorporation of rural cemetery associations *and regulate cemeteries*" (Rev. of N. J., 1877, Vol. I, page 102; Compiled Statutes of N. J., Vol. I, page 375, Sec. 8) which not only included in its Section 8 the substance of Section 10

of the repealed act of 1851, but extended the scope of the exemption so as to read: "The cemetery lands and property of any association formed pursuant to this act, *or otherwise incorporated* \* \* \* shall be exempt from all public taxes, rates or assessments \* \* \*."

Notwithstanding the absolute repeal of the act of 1851, in toto, by the act of 1875, the Legislature, by act of 1879 (P. L., 1879, page 318, Compiled Statutes of N. J., Sec. 44, page 387), after reciting Sec. 10 of the Act of 1851 at length, attempted to pass a supplement thereto. 10

This Section 44, the supplement to a repealed act, reads, "That the cemetery lands and property of any association \* \* \* formed pursuant to this act *and actually used for cemetery purposes* shall be exempt from all public taxes, rates and assessments \* \* \*." 20

This nugatory act (Act of 1879; Sec. 14, Compiled Statutes, supra), eliminates the words "*or otherwise incorporated*" and adds "*and actually used for cemetery purposes.*"

So that if this act (Act of 1879; Sec. 44, supra) is invalid, the Act of 1875 contained in Rev. of 1877, supra, is still in force and effect and *all cemetery land and property* of any association organized under the cemetery act "*or otherwise incorporated*" is exempt from taxation. 30

## POINT I.

10 All the land of the Fairview Heights Cemetery Company are exempt from taxation by virtue of an Act entitled "An Act for the Assessment and Collection of Taxes." (Approved April 8th, 1903, P. L. 1903, page 394; Compiled Statutes, Vol. 4, page 5075.)

20 Under Section 2 of the above act it is provided that "*all property, real and personal, within the jurisdiction of this State, not expressly exempted by this act, or excluded from its operation, shall be subject to annual taxation at its true value under this act and shall be entered on the list of taxable property \* \* \*.*"

30 This section is the final word as to what property shall or shall not be taxed, in that Section 66 of this act provides, "this act shall take effect on the twentieth day of December, 1903, and its provisions shall extend to proceedings on and after that day, relating to taxes assessed in the year 1903, but not to proceedings relating to taxes assessed in prior years; *all acts, general and special, inconsistent with the provisions of this act are hereby repealed*, but this repealer shall not extend to proceedings or remedies relating to taxes assessed prior to the year 1903."

The Legislature has clearly expressed its intention to regulate the taxation of the lands and property of cemetery associations, by the Act of 1903.

Rosedale Cemetery Asso. vs. Linden, 73 N. J. L., 421, at page 424.

40 Hanover Township vs. Camp Meeting Asso., 76 N. J. L., 65; affirmed *ibid.*, 826.

Schinkel vs. Fairview, 76 N. J. L., 445.

Mt. Pleasant Cemetery Co. vs. Mayor, etc.,  
of Newark, 98 Atl. Rep., 448.

Section 3 of this act is as follows: "The following property shall be exempt from taxation under this act: \* \* \*"

**Cemeteries.** (6). Graveyards not exceeding ten acres of ground, *cemeteries and buildings for cemetery use erected thereon*;

The Legislature clearly intended to distinguish between "graveyards" and "cemeteries," and restricted the exemption as to "graveyards" to ten acres and thereafter again increased to 125 acres of cemeteries, thereby intending that cemeteries be exempt from taxation to the extent of their entire area. The limitation of ten acres applies only to graveyards, which in the tax act of 1903 is manifestly not used synonymously with "cemeteries."

The limitation to graveyards has at all times been ten acres, but not so in the case of cemeteries for we find that the original cemetery act limited the exemption to twenty acres; that thereafter the exemption was increased to seventy-five acres and thereafter again increased to 125 acres by the act of 1883, or an increase of 105 acres in 32 years.

Thirty years later by the Tax Act of 1903, no express limitation was placed on cemeteries. Now, therefore, can the respondent say that fifty acres, owned by the prosecutor, which is less than one-half of the exemption allowed under the Cemetery Act of 1883, is an unreasonable quantity of land for it to own for its present use and future occupancy, situated, as it is, adjacent to the thickly populated cities of Hudson, Essex and Bergen

10

20

30

40

counties, and in close proximity to the great metropolitan district of New York where the space required for burial purposes constantly increases.

Hoboken vs. North Bergen, 43 N. J. L.,  
146.

10           “The purpose of this legislation is the protection and preservation of the places where the dead are buried.”

Spear vs. Locustwood Cemetery Co., 72  
N. J. Eq., 821;  
Rosedale Cemetery Asso. vs. Linden, 73  
N. J. L., 421.

20           *All of the land, the subject matter of the assessment now under review, was included in the original grant to the prosecutor and has been dedicated and set apart solely for cemetery purposes.*

Rutherford H. Walker testified as follows  
(Record, page 134, lines 10-35) :

“Q. Mr. Walker, you are connected with the Fairview Heights Cemetery Association?  
A. Yes, sir.

30           Q. And that is exclusively a cemetery association, is it? A. Yes, sir.

Mr. Berg: We will admit that they were properly incorporated.

Mr. Lichtenstein: You will admit that it was a cemetery association organized under the Cemetery Act, that the proper certificates are on file, that it has been doing business as a cemetery since its organization, and that the total amount subject to the assessment is in the cemetery association?

40           Mr. Berg: Yes.

Q. Mr. Walker, has any part of this land which is the subject of this assessment been used for any other purpose than for cemetery purposes? A. No.

Q. Has all the land been dedicated and set apart for cemetery purposes? A. Yes.

Q. Has any part of it been used for any other purpose whatever? A. No.

Q. And has all the lands belonging to the cemetery association from the time of its organization? A. Yes."

10

The intention of the prosecutor is to use this land for the purpose for which it was dedicated and set apart as requirements demanded, and it would be a useless expense to completely grade and plot out these grounds faster than interments demanded, because if it was all done at one time, much of it would have to be done over again, by the time interments were actually made, and until such time, the prosecutor would be put to a great and continual maintenance expense.

20

The respondent will undoubtedly contend that only so much of the lands owned by the prosecutor and actually used for burial purposes should be exempt from taxation.

The Court in the case of *Hoboken vs. North Bergen*, supra, holds that "such construction of the general act is too narrow. The space required for burial purposes constantly increases, and a reasonable quantity of land for future occupancy should be provided. Land acquired for such purpose is not taxable."

30

This finding of the Court is based on the General Tax Act, notwithstanding the fact that the Court in the same opinion, says:

"But if the premises assessed were not exempt under the general law, they are clear-

40

ly not taxable by virtue of the provisions of the supplement of 1862."

10 This same reasoning was applied in the decision of the Board of Equalization of Taxes of New Jersey in the matter of the appeal of Harleigh Cemetery Asso. vs. City of Camden, etc., as appears in the annual report of said Board for the year ending October 31, 1912, page 30.

20 In the case of Mt. Pleasant Cemetery Co. vs. Mayor, etc., of Newark, supra, the lands sought to be exempt from taxation, lay between the high water mark and the dock line of the Passaic River; was not then and had not been a part of the upland; was separated from the original tract by the tracks of the Erie R. R. Co.; was submerged by very high tides except as to a small part thereof which was filled in and was acquired subsequent to the original grant.

*The test in the above case seems to have been whether or not the land could have been used for interments at the time of the assessment complained of.*

30 In that case the Court found, as a matter of fact, that the physical condition of the land at the time of the assessment was such that interments could not be made therein without violating Sec. 22, page 379 of the Cemetery Act, supra, and that it was questionable whether compliance could have been made with Sec. 27, 380 of the same act (Compiled Statutes, Vol. I).

In the case at bar the facts are entirely different. The Fairview Heights Cemetery Company was organized:

40 "Section 2. To cause the same to become a corporation under the laws of the State of New Jersey, and to procure and hold lands

*to be used exclusively for a cemetery or place for the burial of the dead. The same to be held by said corporation."*

"Section 3. The corporation is to be located and its business conducted in the Borough of Fairview in the County of Bergen, N. J."

In pursuance to the purposes aforesaid, all of the land in question, and in addition thereto 10 acres in which interments have heretofore been made (Record, 115, line 30, etc.) were acquired by original grant, dedicated and set apart for cemetery purposes by the prosecutor from the time of its organization, and no part thereof has ever been used for any other purpose (Record, page 134).

All of the land of the prosecutor is "upland," comprises one entire, continuous tract, and at the time of the purchase the Borough of Fairview consented to its being held by the prosecutor, in its entirety, for cemetery purposes.

(Record, page 115, lines 30-40; Record, page 116, lines 1-17.)

"Mr. Lichtenstein: It is admitted on the record \* \* \* that the entire tract of land owned by the Fairview Heights Cemetery Company (which is a corporation organized under the Cemetery Act of this State) consists of sixty acres, and that interments have been actually made in ten of these acres.

Pres. Winton: Now that leaves fifty acres that simply lies there undeveloped?

Mr. Lichtenstein: The fifty acres are the cemetery lands in which interments have not yet been made, but which land is used in connection with these other lands in which interments have been made, and that the parties

pass back and forth on that land in order to reach the land in which the interments are being made, and that actually the rest of the land is being filled up.

Pres. Winton: I think the Commissioners now understand the lay of the land and the position you take.

10 Mr. Maidment: Then the only question would be as to the fifty acres.

Pres. Winton: Yes."

It is therefore shown that all of the land is in actual use for cemetery purposes, as it is either used for interments at the present time, or as a means of ingress and egress to that portion containing such interments.

20 The New York Court of Appeals in reversing the orders of the Appellate Division and the Special Term, said in the case of *People ex rel. Buffalo Burial Park Assn. vs. Stillwell*, 190 N. Y. State Rep., page 287, &c.

"This was a proceeding by certiorari under the statute to review an assessment of the relator's real estate made by the assessors of the Town of Tonawanda. \* \* \*"

30 "The petition alleged 'that all of the said land is actually used and occupied for cemetery purposes and is exempt from taxation under the laws of the State of New York. \* \* \* The assessors in their return to the writ alleged that only about thirty acres of the tract had been inclosed as a cemetery and only that number of acres were being improved, graded, developed, embellished or used for cemetery and burial purposes. It was further alleged that the assessors had been in-

40

formed that the one hundred and twenty-seven acres were occupied at one time by a man named Gordon, who was then paying to the owners a rental for the use of the land, and was using the same for farming and other domestic purposes and not as a cemetery or place of burial. \* \* \* It was further alleged that one Brennan was then and for some time past had been the occupant and in possession of the one hundred and twenty-seven acres, and that he had stated to two of the assessors that he paid rent for the use of the same, and thereupon the assessors entered the land upon the assessment roll as taxable real estate. \* \* \* If it is true, as the relator has alleged in his petition, that the whole tract, including that part embraced in the assessment, is devoted to cemetery purposes, then the assessment was not authorized. \* \* \* *But if it be assumed for the purpose of the argument that everything stated in the return is to be taken as true, these facts do not necessarily show that the land was taxable or that it was not devoted to cemetery purposes within the fair meaning of the law. The cemetery in question was, to use a business expression, a going and growing concern. It was not all occupied by burial plots or by the graves of the dead. It may not be fully occupied for such purposes for many years to come. Of course it is not necessary that the cemetery should be filled with graves in order to be entitled to the exemption, and the mere fact that Brennan had leased an unoccupied portion of the cemetery for the sum of one hundred and twenty-five dollars would not necessarily deprive the re-*

10

20

30

40

10 lator of the exemption. If, for example, he had paid that sum of money for the right to cut and carry away the grass from the unoccupied land, and the money paid by him went into the relator's treasury to be used for taking care of the ground already occupied, that would not change the character of the land as cemetery land, nor deprive the corporation of the benefit of the exemption.

\* \* \* *The relator had no authority to purchase, acquire or hold land for other than cemetery purposes; and it has been held that when such an association has once acquired real estate for burial purposes the lands are exempt from the moment when the title becomes vested in the corporation, and they continue exempt so long as the corporation exists, although no dead bodies be buried therein. It would seem from this statement of the law that the whole of the relator's land was exempt from taxation, unless some portion of it had been permanently abandoned to some other use than that for which it was originally acquired.'"*

20

30 In the case of Metarie Cemetery Association against the Board of Assessors, 37 La. Ann., page 22, the Court holds that, Constitution, Article 207, exempting from taxation places of burial, was not restricted to the narrower import of tenanted graves,—spots of ground occupied by buried corpses—but included entire tracts of land set apart for a cemetery.

In the case of State vs. Wesleyan Cemetery Association, 11 Mo. App., 560, the Court holds that property owned by a cemetery association and actually used as a cemetery at the time of the as-

40

assessment is exempt from taxation, by virtue of the provisions of the Constitution, 1875, declaring that the property of municipal corporations and cemeteries shall be exempt from taxation.

This same view has been held in the cases of

Woodlawn Cemetery Co. vs. Everett, 118  
Mass., 354;

German Evangelical Church vs. Brooks, 10  
8 Ohio Circuit Ct., page 439;

State vs. Lakewood Cemetery Association,  
93 Minn., 191;

State vs. Casey, 210 Mo., page 235.

The land owned by the prosecutor, as is borne out by the foregoing facts, is not an unreasonable quantity of land; is adaptable to the purposes for which it was dedicated and set apart—a cemetery; is gradually used, as occasion requires for interments; is what the Legislature intended as cemetery land, and is being held and used by the prosecutor in its entirety for cemetery purposes. 20

It may be contended by the respondent that the Tax Act of 1903 does not apply, yet under such contention the land of the prosecutor would be exempt under Sec. 8 of the Cemetery Act of 1875, supra.

Prosecutor claims exemption under both acts, although we are inclined to believe the act of 1903 governs. 30

Shinkel vs. Fairview, 76 N. J. L., 445.

**The assessment and tax should therefore be set aside.**

**Fairview Development Company.**

This matter comes before the Court on a writ of certiorari allowed herein, for the review of the as- 40

assessment of taxes made by the Assessor of Taxes of the Borough of Fairview, Bergen County, New Jersey, for the year 1913, on lands of the prosecutor situate in said Borough of Fairview, comprising approximately 24 acres.

10 The lands assessed and taxed were formerly owned by the Fairview Cemetery Company, an association organized in January, 1901, under an act entitled "An Act to authorize the incorporation of rural cemetery associations and to regulate cemeteries" (Compiled Statutes, Vol. 1, page 375)—(Revision of 1877, Vol. 1, page 102).

The prosecutor, Fairview Development Company, is a corporation of the State of New Jersey, organized in June, 1910, under an Act entitled "An Act concerning corporations, Revision of 1896" and the supplements and amendments thereof.

20 The Fairview Cemetery Company, by deed dated October 1, 1910, recorded December 15th, 1910, Book 769, page 670 of deeds for Bergen County, conveyed to the prosecutor all the land then owned by it, comprising approximately 24 acres, which was the original grant to it of 35 acres less about eleven acres theretofore sold (Record, page 170, Exhibit P-2).

30 Thereafter, and on December 8th, 1910, the prosecutor entered into an agreement with the Fairview Cemetery Company (Record, page 170, Exhibit P-3).

## POINT I.

**All the land of the Fairview Development Company is exempt from taxation by virtue of an Act entitled, "An Act for the Assessment and Collection of Taxes" (approved April 8th, 1903, P. L. 1903, page 384; Comp. Stat., Vol. 4, page 5075).** 10

All of the land, the subject-matter of the assessment now under review, was included in the original grant to the prosecutor by the Fairview Cemetery Company, which was organized under the Rural Cemetery Act aforesaid, by deed dated October 1st, 1910 (Record, page 170, Exhibit P-2), and by agreement between the prosecutor and the said Fairview Cemetery Company, dated December 8th, 1910 (Record, page 170, Exhibit P-3), the Fairview Cemetery Company retained the right to sell burial plots for actual burial purposes at prices to be fixed by it, \* \* \* whereupon the prosecutor was to execute a deed of said lots back to the Fairview Cemetery Company, and the Fairview Cemetery Company was to deliver its deed for said burial plots to the purchaser, from time to time, as occasion might require. 20

Mr. Walker testified as follows (Record, page 23, lines 17-40; Record, page 24, lines 1-25): 30

"Q. As I understand it, Mr. Walker, the lands which are the subject of this assessment are the same lands, excepting such as have already been sold for actual interments, which the Fairview Cemetery Company owned when it applied for its charter? A. Exactly, originally. 40

Q. And these lands are the same lands which passed from the Cemetery Company to the Development Company, which is the appellant in this matter? A. Yes, sir.

Q. As soon as the Development Company was organized and obtained its franchise did it start in to make interments in this land?

10 A. The Fairview Development Company?

Q. No, the Fairview Cemetery Company?

A. Oh, yes.

Q. And has the Fairview Cemetery Company continued to make interments in this land? A. Yes.

Q. And that has continued up to the present time? A. Yes, sir.

Q. Have there been hundreds and thousands of interments? A. Oh, we have got over 6,000 interments.

20

Q. And have all of these lands, which is the subject-matter of this appeal, ever been used for any other purposes except for burial purposes since the organization of the Cemetery Company? A. No.

Q. Now, after the organization of the Development Company have interments been made in this land by the Cemetery Company? A. Yes.

30

Q. And has been continued up to the present day? A. Yes.

Q. And are all the interments made by the Cemetery Company? A. Yes.

Q. And has the Cemetery Company exclusive charge of the interments? A. Yes, sir.

Q. Has the Development Company itself ever made any interments there? A. No.

40

Q. Have those lands always, from the time of the organization of the Cemetery Company, been devoted to cemetery purposes? A. Yes, sir.

Q. And for any other purposes? A. No.

Q. And are these lands which are the subject-matter of this assessment the cemetery lands of the appellant? A. Yes, sir."

Page 25, lines 23-40, and page 26, lines 1-28:

"Q. Mr. Walker, these lands, as soon as they were acquired by the Cemetery Company and up to the present time, have been dedicated for cemetery purposes? A. Yes, sir. 10

Q. And have they been dedicated to use for any other purposes, from the time they were first purchased by the Cemetery Company up to the present time? A. No.

Mr. Maidment: *We can admit all that. All lands that have been purchased from the Development Company by the Cemetery Company have been turned over for cemetery purposes for the burial of the dead.* 20

Q. Since the papers which have been offered in evidence here between the Cemetery Company and the Development Company were executed, did the Cemetery Company continue to make interments? A. Yes.

Q. And continues to do that up to the present time? A. Yes.

Q. Has any part of this land, at any time, been used for any other purpose excepting for the burial of the dead? A. No, I will make one correction: Excepting a small portion that we are using for a hot-house. Of course, we use that for our own benefit. 30

By Mr. Maidment:

"Q. How large is that, Mr. Walker? A. Oh, that is a small piece. 40

Q. Probably six or seven lots? A. Oh, no, it doesn't cover one lot.

Q. When you say "one lot" you mean a lot 25 x 100? A. Yes.

10 Q. And this hot-house is used for what purposes, for the purpose of raising plants, and keeping plants for the purpose of embellishing that cemetery? A. Yes.

Q. And that is all that it is used for? A. Excepting the old house that is used there by our watchman.

Q. And that is necessary in the proper care and management and embellishment of the cemetery to have that there? A. Yes."

Page 39, lines 34-38:

20 "Q. Now, during the year 1912 the cemetery companies have bought quite some land from the Development Company, hasn't it? A. Not so much.

Q. It has all been in lots, hasn't it, or plots? A. Plots."

Page 46, lines 15-18:

30 "Q. Has the Fairview Development Company sold any property to anybody else except the Fairview Cemetery Company? A. Nobody."

Page 53, lines 3-7:

"Q. In order to get to your cemetery lands you have got to cross and use the Development Company's lands? A. Yes, we have got to use some of that land."

40

Page 61, lines 3-8:

“Q. Are the people who are stockholders in the Fairview Development Company and the Fairview Cemetery Company the same? A. Practically the same. And I want to say, gentlemen, that we had a hard job to sell stock.

10

While it is true that the legal title to the land forming the subject-matter of this assessment and tax is in the prosecutor, it undoubtedly appears from the testimony that the equitable estate is in the Fairview Cemetery Company, a corporation organized and operating under the Rural Cemetery Act, and that it has been and still is the only company making interments in said land.”

Litz vs. Johnston, 65 N. J. L., 169.

20

## POINT II.

**The land of the prosecutor is actually being used and laid out for cemetery purposes and therefore exempt from taxation under both the General Tax Act of 1903 and the Rural Cemetery Act.**

30

In addition to the testimony of Mr. Walker, quoted in Point I of this brief, he testified as follows:

Page 34, lines 1-18:

“Q. What portion of the Development Company’s property that is now rented is now, of record, laid out the same as the balance of

40

the cemetery lands that are used for interments only? A. What do you mean by that, with paths, or trees, or shrubbery?

Q. Laid out with lawns, trees, paths, roads and streets, and water pipes. A. There are about twenty acres still to be laid out.

10 Q. I didn't ask you that; how much has been laid out? A. There are eleven acres, about, laid out.

Q. Eleven acres now laid out, the title of which is in the Fairview Development Company? A. Yes, sir."

Page 41, lines 18-24:

20 "Q. You have planted trees there and you have laid out this road, whoever it was, the Development Company or the Cemetery Company, I don't know which, for the purpose of using that for the cemetery, and as soon as it is completed you can go from Bulls Ferry Road right down to the Turnpike? A. Yes."

Page 47, lines 3-5:

30 "Q. As I understand, then, Mr. Walker, the number of acres in which there are actual interments are about how many? A. About fourteen."

Page 47, lines 17-21:

40 "Q. Now, the improvements that have been made on this land, such as putting the little lawns over the graves and between the graves, is that of any value excepting for a graveyard? A. That is all."

Page 50, lines 35-40 and page 51, lines 1-8:

“Q. And fourteen acres have been actually sold for interment purposes? A. Yes, sir.

Q. And does that include the necessary lands for avenues and streets that are necessary in order to use it? A. Not altogether; some of it.

Q. Well, how many acres would you say are taken up for the roads leading to these cemeteries that are necessary for the maintenance of the cemetery plots? A. Oh, that is a hard question to answer.

Q. About how many acres? A. An acre, at least.”

10

### POINT III.

**Should the Court find that the prosecutor does not hold the land in question as the trustee for the Fairview Cemetery Company, still the prosecutor is such a corporation as is entitled to hold cemetery land free from assessment and taxation, by reason of the provisions of Section 8 of the Rural Cemetery Act.**

20

Section 8 of the Rural Cemetery Act has been fully treated, although not herein again repeated, under the caption of “The Evolution of the Rural Cemetery Act,” contained in the preceding brief of the Fairview Heights Cemetery Company.

30

The prosecutor contends that it is such a corporation as the Legislature intended to exempt from taxation when it repealed the Act of 1851 on April 9, 1875, wherein only corporations formed pursuant to that act were exempt from taxation, and

40

enacted the present Cemetery Act of 1875, *supra*, and extended the provisions of Section 8 so as to read "*formed pursuant to this act or otherwise incorporated.*"

10 We most respectfully submit that the several cases reported in this State, such as *Richards vs. Dover*, 61 N. J. L., 400, and *Fogg vs. Ocean City*, 74 N. J. L., 362, have no application to the case at bar as the only questions now before the Court under stipulation (Record, page 184) are, "Whether or not the prosecutor is exempt from taxation to the full extent of the land owned by it" or "Whether it is only exempt as to a part thereof, and if so, what part."

The prosecutor claims exemption under both acts, although we are inclined to believe the tax act of 1903 governs.

20

*Shinkel vs. Fairview*, 76 N. J. L., 445.

**The judgment of the Supreme Court should be reversed and the assessment and tax set aside.**

Respectfully submitted,

WELLER & LICHTENSTEIN,  
Attorneys and of Counsel for Appellants.

30

25043

40

## New Jersey Court of Errors and Appeals.

---

FAIRVIEW HEIGHTS CEMETERY COMPANY,

*Prosecutor-Appellant,*

*vs.*

THOMAS FAY, Collector of the  
Borough of Fairview, in the  
County of Bergen, New Jersey,

*Defendant-Respondent.*

On Appeal. 10  
On  
Certiorari  
Taxes of  
1913.

---

FAIRVIEW DEVELOPMENT COMPANY,

*Prosecutor-Appellant,*

*vs.*

THOMAS FAY, Collector of the  
Borough of Fairview, in the  
County of Bergen, New Jersey,

*Defendant-Respondent.*

20

---

### **BRIEF FOR RESPONDENT.**

#### **Statement.**

These cases come before this Court upon an appeal taken by the appellant from a judgment of the New Jersey Supreme Court entered June 6th, 1917, rendered upon writs of certiorari issued out of the Supreme Court to review certain assessments and taxes made and levied by the Borough of Fairview, Bergen County, for the year 1913, upon certain lands of appellants situate in said Borough. Inasmuch as the main legal questions involved are practically the same in both cases, we have thought it expedient to make one brief. We shall, however, take up the cases separately.

30

40

### **Fairview Heights Cemetery Company.**

Appellant is a cemetery association formed pursuant to an act entitled "An Act to authorize the incorporation of rural cemetery associations and to regulate cemeteries," Revision 1875 (Comp. St., p. 370, &c.). It received the consent and approval of the Borough of Fairview to locate a cemetery in said Borough.

10

It (purchased and) owned about sixty-five acres of land, five acres of which it has sold for burial purposes; ten additional acres have been laid out for burial purposes, leaving fifty acres undeveloped and in their natural state. These fifty acres were assessed for taxation by the Borough authorities and such assessment and tax the appellant by this writ seeks to set aside.

20

Appellant appealed to the Bergen County Board of Taxation and the Board sustained the assessment and tax. The time within which an appeal to the State Board of Taxation should be made elapsed before appellant acted and it could not be heard.

Appellant, thereupon, sued out a writ of certiorari to review the said assessment and tax. The same was argued and the Supreme Court, by its judgment, affirmed the assessment and tax.

30

Appellant now appeals from that judgment to this Court.

The grounds of appeal filed are the same as the reasons filed on the writ of certiorari, with the exception of the sixth and seventh.

#### QUESTION INVOLVED.

40

Are lands owned by a cemetery corporation, but not actually in use for cemetery purposes, or within reasonable contemplation of being used for such purposes, exempt from taxation under the provisions of an act entitled "An Act to authorize

## Fairview Heights Cemetery Company.

the incorporation of rural cemetery associations and to regulate cemeteries (Comp. St., 1910, p.

) and under the provisions of the 'General Tax Act of 1903' or either or both of such acts."

## HISTORY OF THE LEGISLATION.

The original act relating to the formation of rural cemetery associations was passed in 1851 (Laws 1851, p. 254). We shall refer to the act as the "Rural Cemetery Act." Sections 4 and 8 of that act are applicable to the question involved in the case at bar. 10

Section 4 authorized cemetery associations to acquire and hold lands not exceeding twenty acres in extent to be held and occupied exclusively for a cemetery for the burial of the dead.

Section 10 of that act provided the "cemetery lands and property of any association formed pursuant to this act, shall be exempt from all public taxes, rates and assessments." \* \* \* 20

By Section 4 of the Act, approved April 9, 1875 (Revision 1877, p. 1396, §465), being a revision of the rural cemetery act, the amount of land which rural cemetery associations might acquire and hold as a cemetery for the burial of the dead, was increased to seventy-five acres, not to exceed in taxable value, however, the sum of Seventy-five thousand dollars (\$75,000.). 30

Section 10 of the Act of 1851 became Section 8 of the Act of 1875, and was amended to read that "the cemetery lands and property of any association formed pursuant to this Act, or otherwise incorporated, as well as the bonds and mortgages given to secure the purchase of such cemetery lands, shall be exempt from all public taxes, rates or assessments." \* \* \* 40

In 1883 (Laws 1883, p. 123) Section 4 of the Act of 1875 was amended by inserting a proviso, viz.:

## Fairview Heights Cemetery Company.

"That any portion of the property of any such company not actually set apart and used for burial purposes, shall be subject to taxation until the same shall be so set apart and used for actual purposes of burial, excepting roads and walks actually graded and in use."

10 The amount of land which the association might take and hold for cemetery purposes and the value thereof remaining unchanged by this amendment.

In 1889 (Laws 1889, p. 418) this section was further amended increasing the number of acres of land which the association might take and hold to 125 acres, but leaving the amount of taxable value of lands which might be held at \$75,000. This amendment contained the same proviso as the Act of 1883 subjecting such portion of the lands of any such association not actually set  
20 apart and used for burial purposes to taxation.

**ARGUMENT.****POINT I.**

**The assessment and tax made and levied was upon lands not actually set apart and used for burial purposes.**

30 It was admitted on the hearing before the Bergen County Board of Taxation that the appellant owned sixty acres of land and that interments have been actually made in about ten acres (Record, p. 115); that the remainder are undeveloped (Record, p. 115); studded with trees, rock crops out all over the top of it (Record, p. 118); no interments have been made therein (Record, p. 116); it is just as nature left it (Record, p. 118).

The assessment made is upon these fifty acres.

Fairview Heights Cemetery Company.

## POINT II.

**Under the provisions of the "Rural Cemetery Act", only such portion of the lands of Appellant as were actually set apart and used for burial purposes, excepting roads and walks actually graded and in use, are exempt from taxation.**

10

The two sections of the "Rural Cemetery" Act which are applicable to the case at bar, are

Section 4, providing:

"That any association incorporated under this act, or under any special act, may take, by purchase or devise, and hold within the county in which the certificate of their incorporation is recorded or in a county adjoining thereto, lands not exceeding one hundred and twenty-five acres in extent, such lands to be adjoining each other and not exceeding in taxable value seventy-five thousand dollars, to be held and occupied exclusively for a cemetery for the burial of the dead; such land, or such parts thereof as may, from time to time, be required for that purpose, shall be surveyed and subdivided into lots or plots of such size as the trustees may direct, with such avenues, paths, alleys and walks as the trustees deem proper, and a map or maps of such surveys shall be filed and kept in the office of the association, open to the inspection of the lot-owners; the trustees may sell and convey the lots or plots, and parts of lots or plots, designated on such maps, upon such terms as shall be agreed, and subject to such conditions and restrictions as may be imposed upon the use of such lots or plots by rules or regulations now adopted or hereafter to be adopted, by the trustees of such association, the conveyances to be executed under the common seal of the association and signed by the president, or the vice-president and the treas-

20

30

40

## Fairview Heights Cemetery Company.

10 urer of the association; any association incorporated under this act may hold personal property to an amount not exceeding five thousand dollars, besides what may arise from the sale of lots or plots; *provided, that any portion of the property of any such company, not actually set apart and used for burial purposes, shall be subject to taxation until the same has been so set apart and used for actual purposes of burial, excepting roads and walks actually graded and in use.*"

Section 8, providing:

20 "That the cemetery lands and property of any association formed pursuant to this act, or otherwise incorporated, as well as bonds and mortgages given to secure the purchase-money of such cemetery lands, shall be exempt from all public taxes, rates or assessments, and shall not be liable to be sold on execution, or be applied in payment of debts due from any individual proprietors; but the proprietors of lots or plots in such cemeteries, their heirs or devisees, may hold the same exempt therefrom, so long as the same shall remain dedicated to the purpose of a cemetery, and during that time, no street, road, avenue or thoroughfare shall be laid through such cemetery, or any part of the lands held by such association for the purpose aforesaid, without the consent of the trustees of such association, except by special permission of the legislature of the State."

30

Appellant pays no attention to the provision of Section 4 of the Act relating to "Rural Cemetery Associations," but, brushing it aside, lays great stress upon Section 8 of the act, contending that under the terms thereof, *all* lands of the association are exempt from taxation.

40 Respondent contends that Sections 4 and 8 must be read together and not separately; that when read separately they are apparently inconsistent and conflicting while when read together,

## Fairview Heights Cemetery Company.

they harmonize and make the legislative intent plain. An examination of the history of the legislation above set forth discloses that the legislature, recognizing that cemeteries are necessary and that the places of burial of the dead are generally regarded as sacred and consecrated, wisely provided that they should be neither sold for taxes nor under execution for debt or otherwise, and therefore exempted them therefrom. **10**

As the municipalities of the State become more populous and it became apparent that the providing of burial places for the dead would eventually become greater, the amount of land which a cemetery association might take and hold was increased by the legislature from time to time, until finally it was permitted to acquire and hold one hundred twenty-five acres. It is, however, the scheme of government that all property should bear its proportion of the burden of maintaining the state, and exemptions from taxation are not favored. The legislature recognized that as the lands which such associations held were, under the then existing law, taken out of the tax ratables of the municipality where they lay, the more land exempted from taxation the greater the burden placed upon the remaining property in such municipality, and while admitting the necessity for the existence of cemeteries, therefore, among other things, determined that a cemetery association should not be permitted to take from the taxable property of a municipality a tract of land, the greater portion of which might not be needed for cemetery purposes for many years, if ever, and hold the same free from taxation during the time the same lay idle and not used for cemetery purposes. In 1883, therefore, the legislature amended Section 4 of the Rural Cemetery Act and provided that only so much of the lands of a ceme- **20**  
**30**  
**40**

## Fairview Heights Cemetery Company.

tery association as was actually set apart and used for burial purposes, should be exempt and subjected the remainder to taxation until it was so set apart and used. The same provision appears in the amendment of 1889. The terms of Section 8 of the Act of 1875 have not been changed since that date.

- 10 Appellant seeks to read Sections 4 and 8 separately and apply the terms of Section 8 to the case at hand, and to exclude the application of the terms of Section 4 therefrom. This cannot be done. Section 4 applies just as much as Section 8. They must be read together.

It is a familiar rule in interpreting statutes that one part thereof must be so construed by another that the whole (if possible) may stand.

- 20 *Rudderow vs. State*, 31 N. J. L., 512;  
*State, Morris, etc., R. Co. vs. Commissioners*, 38 N. J., 472.

If read together it is plain that the exemption in Section 8 of "cemetery lands and property" applies to "the lands and property of cemetery associations actually set apart and used for burial purposes."

- 30 In the case at bar, the Supreme Court said (italics ours; after reciting the various sections and amendments of the Rural Cemetery Act applicable to the case): "These various enactments are *in pari materia* and must be considered together as presenting a cohesive and consistent legislative scheme declaratory of a state policy of setting aside, by a separate species of tenure through corporate agencies, sections of land, free from taxation, *where such lands are actually in use*, or within reasonable contemplation of being  
40 used for the purpose declared in the statute" (see Opinion, 101 Atl., p. 405).

## Fairview Heights Cemetery Company.

This construction of the statute gives effect to all its provisions and, we submit, correctly interprets the legislative intent. Under this construction the lands assessed were properly so assessed.

Relative to the construction to be placed upon Section 8 of the Rural Cemetery Act, we respectfully call attention to *Spear vs. Locust Wood Cemetery Co.*, 72 N. J. Eq., 821, and *Rosedale Cemetery Co. vs. Linden*, 73 N. J. L., 421, set forth under Point III. 10

**POINT III.**

**Under the provisions of the General Tax Act of 1903 only such portion of the lands of appellant as were actually set apart and used for burial purposes excepting walks and roads actually graded and in use are exempt from taxation.** 20

Appellant further claims, however, that under the terms of the General Tax Act of 1903, Section 3, Sub-division 6, providing

“The following property shall be exempt from taxation under this act, namely,

\* \* \* \* \*

“(6) Graveyards not exceeding ten acres of ground, cemeteries and buildings for cemetery purposes.” 30

the lands of appellant, *to the full extent of the amount it is permitted to hold by law are exempt.*

It has been held that the General Tax Act of 1903 regulates the taxation of the property of cemetery associations (*Rosedale Cemetery Association*, 73 N. J. L., 421) and repeals all exemptions from taxation except those expressly allowed by 40

## Fairview Heights Cemetery Company.

it so far as the legislature had power so to do (*Hanover Township v. Camp Meeting Association*, 68 Atl., 753).

Assuming that, although incorporated under the "Rural Cemetery" act, and bound by the provisions thereof, the appellant, as to matters of taxation, is governed by the General Tax Act of 1903, the question which then confronts us is—what was the legislative intent when it exempted from taxation "Graveyards not exceeding ten acres; cemeteries and buildings for cemetery use erected thereon?" It is evident the legislature distinguished between "graveyards" and "cemeteries" although as generally understood, the terms are synonymous. It is probable, however, that the term "graveyard" was intended to refer to burial places surrounding a church, or family burial places, and that the term "cemetery" referred to the lands of cemetery associations which generally exceeded ten acres.

Indeed in *Mausoleum Builders of N. J. v. State Board of Taxes, &c.* 100 At., 236, this Court (Chief Justice Gummere, writing the opinion) said:

"At that time (1866) lands used for the interment of the dead (with, perhaps, the exception of a few private lots where the owners of farms buried their own immediate families) were graveyards and cemeteries; the former being appendages to the churches in the state, used for the burial of the dead of the congregations, and in the ownership of the church organizations; the latter being owned by corporations created by the state either under special charter or general law, usually known as cemetery associations, and brought into existence for the primary purpose of acquiring lands to be devoted to the interment of the dead."

## Fairview Heights Cemetery Company.

Did the legislature intend that all the lands owned by a cemetery association, whether set apart and used for burial purposes, should be exempt? Such associations are authorized to hold 125 acres of land. If only five acres are set apart and used for burial purposes, are the remaining acres exempt from taxation until by process of time, extending over a great many years, if ever, the land comes into use for burial purposes? **10**

In the case at bar the Supreme Court said:

“In enacting legislation of this general character whose main and fundamental purpose is the protection under proper management of the bodies of the dead, it is not reasonable to assume that the power conceded by the Legislature to Cemetery Associations for that purpose, is so comprehensive in scope as to enable them to purchase tracts of territory, and to hold them unimproved and undeveloped for any purpose, out of the taxable assets of township, county and state assessments.” **20**

The mere fact that land is owned by a cemetery association is not sufficient to exempt it from taxation. The right of exemption depends upon whether the land is in reality a “cemetery.” *Mount Pleasant Cemetery Co. v. Newark*, 98 Atl. Rep., 448. **30**

Webster defines a “cemetery” as “a place or ground set apart for the burial of the dead;” *Am. & Eng. Encyc. of Law (2nd Ed.)* Vol. 5, p. 781, likewise defines it.

In *Concordia Cemetery Association v. Minnesota & N. W. R. Co.*, 121 Ill. 199; 12 N. E. Rep., 536, 541, the Supreme Court of Illinois said:

“What creates the cemetery is the act of setting the ground apart for the burial of **40**

## Fairview Heights Cemetery Company.

the dead, marking it and distinguishing it from the adjoining ground, as a place of burial."

10 In the case at bar five acres have been sold for burial purposes; ten acres have been laid out for burial purposes while the fifty acres assessed are undeveloped and in their natural state. These fifty acres are not a "cemetery;" they have not been actually "set apart for the burial of the dead;" nor marked nor distinguished in any way from the adjoining ground as a place of burial.

But even had the appellant platted the whole of its lands, while it used only a part thereof for burial purposes, it could not escape taxation on the whole.

20 In *Rosehill Cemetery v. Kern*, 147 Ill., 483, 35 N. E., 240, the Supreme Court of Illinois said:

30 "We do not wish to be understood as holding that cemetery grounds are only exempt from taxation when burials have been actually made upon them, or that the necessities of the corporation may not be reasonably anticipated by appropriating grounds to burial purposes before they are absolutely demanded, so as to bring them within the exemption. This, we think, is done by this company when it 'makes up' sections or otherwise, and acting reasonably, in good faith, actually devotes its ground as a body to immediate use for burial. *It cannot however, by platting a large body of land, and appropriating a fraction of it to actual burial purposes, escape taxation of the whole.*"

In the case at bar the Supreme Court said:

40 "Ownership and use seem to be the legislative tests upon which an exemption from taxation of this character may legally be based (101 Atl., 405)."

## Fairview Heights Cemetery Company.

Exemptions from taxation are to be considered most strictly against the grantee. *Church of Redeemer v. Axtell*, 12 Vr., 17; *Congregation etc. v. Brakley*, 38 Vr. 176; *Presbyterian Bd. v. Fisher*, 39 Vr. 143 at p. 145; *Mausoleum Builders v. State Board of Taxes and Assessment*, 96 Atl., 491; *Cooper Hospital v. Camden*, 41 Vr., 478; the resolution in case of doubt, being in favor of the rule which subjects all property to a just share of the public burdens:—*Rosedale Cemetery Association v. Linden*, supra; they should be rigidly scrutinized and never permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require. *Morris Canal Co. v. St. Board of Assessors*, 76 N. J. L., 627; affirmed 239 U. S., 126. 10

In the case at bar the Supreme Court re-affirms the doctrine that exemptions from taxation are to be considered most strictly against the grantee in clear and unmistakable language. “The fundamental rule pervading all exemptions from the general tax burdens of the state is that they are not favored by the law, and will not be construed to exist unless the statute invoked to support them, expresses the legislative intention in clear and unmistakable terms.” (See Opinion 101 Atl., 405, and cases cited at p. 406). 20

If there is any doubt in the case at bar as to the legislative intent in cases of taxation of cemetery lands, the resolution should be in favor of subjecting the lands in question to taxation. 30

The fair and equitable construction of the act however, and, we submit, the one clearly in accord with the legislative intent, is that only so much of the lands of a cemetery association actually set apart and used for burial purposes so as to create a “cemetery,” should be exempt from 40

## Fairview Heights Cemetery Company.

10 taxation, and the remainder subjected thereto until the same is so actually set apart and used. By this construction the purpose of the act is accomplished, to wit, the places of the burial of the dead are saved from the sale for unpaid taxes, or under execution and the lands not yet actually set apart and used for burial purposes, are sub-  
 10 jected to their fair share of the cost of supporting the state, until they are so set apart and used.

The case in this state most frequently cited in favor of the proposition that all cemetery lands are exempt is that of *Hoboken v. North Bergen*, 43 N. J. L., 146 decided 1881 (Parker, J.) where the Court (Supreme Court) said:

20 "The general tax law of the state exempts cemeteries from taxation. It is, however, contended that the exemption under the general law extends only to the land actually used for burial purposes, and that arable land within the boundaries of a cemetery, although adjoining the part occupied by graves, is liable to taxation. Such construction of the general act is too narrow. The space required for burial purposes constantly increases, and a reasonable quantity of land for future occupancy should be provided. Land required for such purposes is not taxable."

30 This case was decided prior to the amendment of Section 4 of the act, adding the proviso hereinabove set out.

The same Judge, however, writing the opinion in *Newark v. Township of Clinton*, 49 N. J. L., 370 (Decided 1887) said:

40 "The second and third reasons urged for setting aside the assessment are that the property in question is a graveyard, or cemetery, and therefore, it is claimed, that no part of it is liable to taxation. To sustain this view, the case of *City of Hoboken v. Township of North Bergen*, 14 Vroom 146,

## Fairview Heights Cemetery Company.

is cited on behalf of the prosecutor. But that case is not applicable to the question now before the court. In that case, seventeen acres were declared exempt from tax, by a special act. A statute was passed in 1857 (Pamph. L. p. 498) which gave the city of Hoboken express power to purchase the property for burial purposes, to be set apart forever for such purposes. After the premises, consisting of about seventeen acres, had been purchased by the City of Hoboken and set apart, a supplement was passed in 1862, which in direct terms exempted the whole tract from taxation. 10

\* \* \* \* \*

“This case must therefore be governed by the general law on the subject. The act ‘authorizing the incorporation of rural cemetery associations and regulating cemeteries,’ passed April 9th, 1875, (Rev. p. 100) does not apply because there is no corporation in this case, pursuant to said act. 20

“The sixty-fourth section of the general tax law (Rev. p. 1152) enumerates the property exempt from tax in this state and it enacts that ‘graveyards not exceeding ten acres’ shall be exempt. The act does not require as much as ten acres to be exempt, but that the exemption shall not exceed ten acres.

“The quantity of land which is exempted from assessment by the general tax law will depend upon the circumstances of each case. 30 Where there is a burial-ground of ten acres or less, no part of which is used for pecuniary profit, but where the whole contains graves, whether in close proximity or scattering, the whole will be exempt. But where a part of the premises is under cultivation, in meadow, or covered by woods, such part is taxable, and only the part used for interments, with such reasonable quantity of land adjoining as will probably be required for a few years to come, will be exempt. When more 40

## Fairview Heights Cemetery Company.

land shall become necessary for burial purposes, the quantity of land exempt from tax may in future be increased."

10 The sixty-fourth section of the General Tax law in force at the time Justice Parker wrote the opinion in *Newark v. Township of Clinton*, supra, contained the same provisions as to exemption of graveyards, cemeteries and cemetery buildings, as does the general tax act of 1903, now in force.

In the case of *Rosedale Cemetery Association v. Linden*, 73 N. J. L., 421 (Decided June Term 1906) at page 422, the Supreme Court (Justice Garretson) said:

20 "It is in accordance with the common wish of mankind that the places where the dead are buried should be protected and preserved against the interference of possible sales for unpaid taxes or under execution for debts, and be kept free from all molestation or desecration. These legislative exemptions of cemetery property are the expression of that wish. *But it is not perceived how that wish is made effectual by exempting from taxation property not used for burial places that has no association connected with it, and may be disposed of by the association at any time, to any person, for any purpose.*"

30 In the case of *Spear v. Locust Wood Cemetery*, 72 N. J. Eq., 821 (decided February Term 1907) V. C. Leaming cites the *Rosedale Cemetery* case and construes Section 8 of the "Rural Cemetery Act," and without apparently considering the proviso set out in Section 4, said:

40 "The evidence discloses that but a small portion of the land covered by the mortgage has been brought into use as a cemetery. About one hundred burial lots have been sold and about thirty interments have been made. The contention is made that as the act of May 9th, 1889 (Gen. Stat. p. 356, §40), authorizes one hundred and twenty-five acres to be

## Fairview Heights Cemetery Company.

held for cemetery purposes, and as that exact acreage was accordingly conveyed to the Locust Wood Cemetery Association, the entire one hundred and twenty-five acres will be exempted from sale. This contention cannot be maintained. The exempting section (section 8) defines as exempt from taxation and also from sale under execution 'the cemetery lands and property' of the association. I think that the only reasonable construction of the language used is that the land intended by the legislature to be exempted from taxation and from sale under execution is the land actually brought into use for cemetery purposes. With no limitation at that time existing upon the quantity of land which a cemetery company could own, the legislative intent to exempt from taxation and from sale all lands which cemetery companies might acquire cannot be reasonably assumed from the language used. The natural significance of the words 'cemetery lands' as well as the manifest purpose of the legislation, indicates an intention to extend the exemptions only to lands actually used for cemetery purposes."

10

20

While it is true that in the Locust Wood Cemetery and Rosedale Cemetery cases (supra) the Court was construing Section 8 of the "Rural Cemetery Act," the reasoning applied thereto is applicable to the General Tax Act of 1903 in order to ascertain the legislative intent as to the extent of the exemption. The remarks of Mr. Justice Garretson in the Rosedale Cemetery case (supra) are especially applicable. If the exemption of graveyards and cemeteries is founded upon the "wish of mankind that the place where the dead are buried should be protected and preserved against the interference of possible sales for unpaid taxes or under execution for debts, and be kept from all molestation or desecration," such purpose cannot in any manner be effectuated by permitting associations to hold

30

40

## Fairview Heights Cemetery Company.

property not used for burial purposes, and which they may sell to any person at any time for any purpose, free from the common burden of taxation.

10 If it were held that all lands of a cemetery association were exempt from taxation, what would prevent a company from purchasing and holding the full acreage allowed (125 acres) using two or three acres for burial purposes, and after enjoying freedom from taxation for ten or fifteen years, disposing of the balance for factory purposes or buildings lots. Such was clearly not the intent of the legislature.

20 It was clearly the legislative intent that only so much of the lands of such associations as are actually set apart and used for burial purposes, shall be free from taxation.

The Supreme Court, in the case at bar, recognizing the justice of this contention, said:

30 "In enacting legislation of this general character whose main and fundamental purpose is the protection under proper management of the bodies of the dead, it is not reasonable to assume that the power conceded by the Legislature to cemetery associations for that purpose, is so comprehensive in scope as to enable them to purchase tracts of territory, and to hold them unimproved and undeveloped for any purpose, out of the taxable assets of township, county and state assessments. If such a construction of this legislation were to be admitted, there would appear to be no limit to the bounds of the ownership of the corporation, within the terms prescribed in the act, except the financial carrying capacity of the corporation itself, and the following case involving a claim for exemption upon this ground will enable one to perceive how even that protective limitation  
40 may be evaded in actual practice.

## Fairview Heights Cemetery Company.

“The mere organization of a company, under the cemetery acts, and the purchase of land thereafter, without expenditure to improve or develop it, but the mere passive holding of the land, as it were by a species of mortmain, is not enough to bring the claim for exemption within the language and spirit of this legislation. Ownership and use seem to be the legislative tests upon which an exemption from taxation of this character may legally be based. Section 4 of the rural cemetery act in 1883 was amended by a proviso reading that any portion of the property of any such company ‘not actually set apart and used for burial purposes, shall be subject to taxation,’ etc., L. 1883, p. 123. The amendment of 1889 made no change in this feature of the legislation. P. L. 1889, p. 418. These various enactments are in pari materia and must be considered together as presenting a cohesive and consistent legislative scheme declaratory of a state policy of setting aside, by a separate species of tenure, through corporate agencies, sections of land, free from taxation, when such lands are actually in use, or within reasonable contemplation of being used for the purpose declared in the statute. *Mt. Pleasant Cemetery v. Newark* (Err. & App.) 98 Atl., 448; *Rosedale Cemetery v. Linden*, *supra*; *Mausoleum Builders v. State Board*, (Err. & App.) 100 Atl., 236. The locus in quo in this controversy presents no indicia of actual use or of reasonably contemplated use, within the statutory purview, which will enable us to bring it within such a classification, and the tax in question should therefore be affirmed.

**The assessment and tax upon the fifty acres of land not actually set apart and used for burial purposes, should be affirmed.**

### **Fairview Development Company.**

The writ in this case brings before the Court the assessment and tax made and levied by the Borough of Fairview, Bergen County, for the year 1913 on certain lands of the appellant, situate in said Borough and comprising about twenty-four acres of land.

- 10** The lands assessed and taxed were formerly owned by the Fairview Cemetery Company, an association formed under the act entitled "An Act to authorize the incorporation of rural cemeteries associations and to regulate cemeteries" (Comp. stat. p. 370) hereinafter called the "Rural Cemetery Act."

- 20** The Fairview Development Company is a corporation organized under the provisions of the act entitled "An Act concerning corporations, revision of 1896" and the supplements thereto and amendments thereof. In 1910 by deed dated Oct. 1, 1910 recorded December 15, 1910, Book 769 p. 670 of deeds for Bergen County, Fairview Cemetery Company conveyed all of the thirty-five acres of land owned by it as aforesaid excepting thereout, three certain plots of land, to the Fairview Development Company; the consideration named in said deed being "\$1.00 and other valuable consideration."

- 30** On December 8, 1910 the Fairview Cemetery Company and the Fairview Development Company entered into an agreement, reciting the conveyance hereinabove mentioned, and stating that the real consideration for said deed was the sum of \$360,000., whereof \$120,000., was in cash and the balance by the assumption of a mortgage for \$240,000., in which agreement it was set out.

- 40** "The Cemetery Company may continue, from time to time, to sell burial plots for

## Fairview Development Company.

actual burial purposes at prices to be fixed by them, but in no case to be less than \$1.75 per square foot, and receive the purchase price therefor, and upon making such sales, they shall forthwith report the same at the end of each month to the Development Company, with the prices therefore, and shall return and pay therewith to the Development Company 60% of the gross price for which sad lots may be respectively sold, and the Development Company shall forthwith, upon receipt of said moneys, obtain releases from the mortgages upon said property of the lots so sold, and will execute a deed of said lots back to the Cemetery Company, to the end that the Cemetery Company may deliver its deed for the said plats to the buyers thereof, from time to time as occasion may require free and released from all encumbrances." 10

The Charter of the Farview Development Company states: 20

"THIRD: The objects for which the corporation is formed are to buy, sell, mortgage, lease, develop, improve and deal in real estate, and to erect and construct buildings and other improvements thereon, and deal in mortgages and other real estate securities, said business to be conducted in the counties of Bergen and Hudson in the State of New Jersey.

"FOURTH: The amount of the total authorized capital stock of the corporation is \$120,000., which is divided into 2,400 shares of the par value of \$50. each. The amount of capital with which it will commence business is \$50,000." 30

Fairview Development Company.

**ARGUMENT.**

**POINT I.**

**The assessment and tax made and levied was upon lands not actually set apart and used for burial purposes.**

10 The land under discussion in this matter consists of twenty-six acres of land lying east of the Hackensack Plank Road (Bergen Turnpike) and is part of a tract of approximately forty acres lying between the said Turnpike and the Bulls Ferry Road and Dallytown Road, in Bergen County, N. J. (Record, p. 47), and eleven acres of meadow land lying west of the Bergen Turnpike (Record, p. 47).

20 No interments have been made therein; they have not been set apart and used for burial purposes; they are undeveloped and in their natural state (Record, p. 47). Although many interments have been made, and many graves sold by the company, they are all in the lands unassessed.

**POINT II.**

30 **Fairview Development Company having been incorporated under the General Corporation Act, has no power to conduct a "cemetery" and is not entitled to hold lands free from taxation.**

40 Prior to 1851 "cemeteries" were conducted as "grave yards" or by special act of the legislature. Since 1851 there has been only the one act (though, of course, supplemented and amended) authorizing the incorporation of "cemetery associations." The legislature having enacted general

## Fairview Development Company.

laws authorizing the incorporation of cemetery associations, and subjecting such companies to certain restrictions and granting them certain privileges, clearly intended to confine their incorporation to the "Cemetery Act" and to prohibit their incorporation under the "General Corporation Act."

*Richards v. Dover*, 61 N. J. L., 400; 10

*Fogg v. Ocean City*, 74 N. J. L., 362 at 366;

In re Roman Catholic Diocese of Newark, 37 N. J. L. J., 371, at page 373.

Fairview Development Company never secured the consent and approval of the borough authorities to locate and establish a cemetery in that borough and without such consent and approval could not do so. Being incorporated under the General Corporation Act it was not authorized to do so, nor under said Act can it claim exemption from taxation. 20

The lands of the Fairview Development Company are clearly not exempt from taxation.

**POINT III.**

**While the legal title to the lands in question is in the Fairview Development Company, such lands are taxable.** 30

Appellant contends, however, that the Fairview Cemetery Company is the real owner of the lands and that the placing of the legal title in the Fairview Development Company was a mere matter of convenience; that the lands are *cemetery lands*, whether held in the name of the Cemetery Company or not, and, therefore, are exempt. It is clear that the Development Company has no power to conduct a cemetery; it is 40

## Fairview Development Company.

not subject to the terms of the Cemetery Act and is entitled to none of its exemptions. The Fairview Cemetery Company is. While the legal title to the lands in question is held by the Development Company, they are clearly taxable. When conveyed to the Cemetery Company and actually used for burial purposes, they may not be taxable.

10

**POINT IV.**

**Should the Court find that the Development Company is a mere trustee for the Cemetery Company, and the lands in question are really the lands of the Cemetery Company, the assessment and tax should be affirmed.**

20 Assuming the lands assessed to be the lands of the Fairview Cemetery Company and said company entitled to all the benefits of the Cemetery Act and the General Tax Act of 1903, still, for the reason set forth in the argument relative to the assessment of the lands of the Fairview Heights Cemetery Company, under Points II and III, the assessment is valid and should be affirmed.

30

40

Fairview Development Company.

**FINALLY.**

**Appellants are not entitled to exemption from taxation on the lands not actually set apart and used for burial purposes, because such companies are engaged in profit-making which under the Rural Cemetery Act is not permitted.**

10

A cemetery, if not a charitable institution, has been held to be a public or pious use, (*Close vs. Glenwood Cemetery*, 107 U. S., 74; *Newark vs. Stockton*, 44 N. J., Equity 180 *East Ridgelawn Cemetery Company vs. Frank*, 77 Equity, 39. The lands actually set apart and used for burial purposes are exempted from taxation and assessment and from levy and sale under execution. The Cemetery Act confers a limited power of eminent domain. It allows the Cemetery Association to hold property real and personal upon trust to apply the income to the improvement and embellishment of the grounds. It directs the application of the proceeds of sales of lands to certain purposes. No provision is made therein for the payment of dividends to, or the sharing of profits by stockholders or incorporations. It, when incorporated, is not a business corporation. The whole scheme of the act is against the making, by stockholders or incorporators, of profit out of the privileges and exemptions granted by it. In the case of *Frank vs. East Ridgelawn Cemetery Company*, 77 Equity, page 36, Vice-Chancellor Stevens said:

20

30

“It is not likely that the legislature intended to confer immunity from taxation and levy coupled with the power of eminent domain in order that some individual might make an increased profit out of these extraordinary powers and immunities.”

40

## Fairview Development Company.

In many states, the statutes exempting the land of cemetery associations from taxation and levy and sale under execution distinctly provide that such exemption shall exist only so long as the association shall not be used as a profit-making institution.

- 10 *Brown's Heirs vs. City of Pittsburg*, 16 Atl., 43;  
*Oakhill Cemetery Assn. vs. Wells*, 78 N. E., 350; 38 Ind. Appeals, 479;  
*State vs. Board of Assessors of Parish of Orleans*, 26 So., 872; 52 La. Am., 223;  
*Commonwealth vs. Lexington Cem. Co.*, 70 S. W., 280; 114 Ky., 165;  
*Negley vs. City of Henderson*, 55 S. W., 554; 21 Ky. Law Rep., 1394;  
20 *Metarie Cemetery Assn. vs. Board of Assessors*, 37 La. Ann., 32;  
*City of Paducah vs. Commonwealth*, 124 S. W., 286;  
*Simocke vs. Sayre*, 126 N. W., 816;  
*Town of Milford vs. Commissioners of Worcester Co.*, 100 N. E., 60; 213 Mass., 162.

- 30 The purpose of the legislature in passing the Cemetery Act was to permit the formation of associations for establishing cemeteries for the burial of the dead, and, recognizing the common wish of mankind that such burial places be not subject to sale for unpaid taxes or under execution, the legislature exempted the same therefrom. But it is clear that the legislature never intended that individuals forming themselves into an association for the purpose of buying and selling burial places *for profit*, should be entitled to exemption from taxation and levy and sale under  
40 execution upon the lands so held by it.

It is, therefore, but right to assume that the

## Fairview Development Company.

legislature, in passing the Act of 1883, amending Section 4 of the Cemetery Act and providing therein that such part of the cemetery lands as are not actually set apart and used for burial purposes should be subject to taxation until so actually set apart and used, intended to prevent the devising by individuals of schemes to circumvent the purpose of the Act and use the same to secure exemption from taxation and levy and sale under execution for the purpose of making an increased profit from the sale of lands. **10**

In *Mausoleum Builders of N. J. v. State Board of Taxes, etc.*, (supra) this Court said:

“Neither the language of the tax enactment nor its history suggests that in passing it the Legislature intended to confer immunity from taxation upon business corporations that should see fit to devote a part of their capital to the erection of mausoleums for purely commercial reasons, and in the hope of making a profit out of the transaction.” **20**

In the present case, the evidence shows that the cost of the land owned by the Fairview Heights Cemetery Company, plus the cost of acquisition and the development of fifteen acres for cemetery purposes was \$64,000 (p. 134). It further appears that the association executed and delivered upon this land, which improved, cost \$64,000, a mortgage securing an issue of bonds to the extent of \$640,000 with interest at 6% per annum. These bonds are all outstanding (p. 134). **30**

It further appears that the Cemetery Association sold five (5) acres of this improved land for \$42,600 (p. 134). Can it be said that land which cost, improved, \$64,000 and which is mortgaged for the amount of \$640,000, with interest at 6% per annum, is devoted to a public or pious use? **40**

Fairview Development Company.

The bonds were issued at the ratio of ten to one. In other words, for every one hundred dollars invested in the lands the Cemetery Company issued bonds to the extent of \$1,000 (p. 134).

In the Fairview Development Company matter, the cost of the lands, expenses of acquisition and development of a sufficient quantity thereof to permit the doing of business was \$80,000. The  
 10 same scheme was devised, *bonds were issued upon such lands to the extent of \$240,000* and were given at the ratio of three to one, such bonds bearing interest at the rate of 6%.

After the Fairview Cemetery Company had owned these lands for some years, during which time they had sold about fifteen (15) acres thereof, in 1910 they sold and conveyed the remaining lands to the Fairview Development Company, a  
 20 corporation organized under the General Corporation Act, *for the sum of \$120,000 in cash and the assumption by the Development Company of the \$240,000 mortgage hereinabove mentioned.* (See Agreement set forth on page 149 of the printed book).

We submit that these lands, assessed which are not devoted to and actually, set apart and used for cemetery purposes, but are used for the purpose of bringing to the holders of these bonds  
 30 great profit, should not be and are not exempt from taxation until the same are actually set apart and used for burial purposes.

**The judgment of the Supreme Court dismissing the writs of certiorari and affirming the taxes should be affirmed.**

Respectfully submitted,

EDWARDS & SMITH,  
 Attorneys of Respondent.

40

EDWIN F. SMITH,  
 Of Counsel.



