

## New Jersey Court of Errors and Appeals

MOUNT PLEASANT CEMETERY COM-  
PANY,

*Prosecutor and Appellant,*  
*vs.*

THE MAYOR AND COMMON COUNCIL  
OF THE CITY OF NEWARK, *et al.*,  
*Defendants and Respondents.*

*On Certiorari.*

### BRIEF OF PROSECUTOR AND APPELLANT.

This is a writ of *certiorari* granted to review the action of the taxing officers of the City of Newark in taxing for the year 1913 a certain portion of the premises of Mount Pleasant Cemetery Company located in that city.

The premises sought to be taxed lie to the east of the Erie Railroad tracks across the entire width of the cemetery and extend out to the dock line of the Passaic River. It is about fifteen hundred feet in length by about four hundred feet wide at the north end, by about one hundred and fifty feet wide at the south end.

The Cemetery Company acquired the fee to the premises in eighteen hundred and eighty-one, as being the owner of the upland, from the State of New Jersey through a deed from the Riparian Commissioners.

The State of Facts as agreed upon in the State of the Case, page 26, show the condition of the premises.

The Cemetery Company claims that the land is exempt from taxation for the following reasons:

1. By virtue of the provisions of the Tax Act of 1903.

2. The charter of the company granted in 1844 and the supplement thereto in 1861 constitute an irrevocable contract with the State, and by virtue of the provisions thereof the property in question of the Cemetery Company is non-taxable.

#### POINT I.

THE LANDS IN QUESTION UPON WHICH THE TAXES FOR THE YEAR 1913 HAVE BEEN ASSESSED BY THE CITY OF NEWARK ARE BY THE GENERAL TAX ACT OF 1903 EXEMPT FROM TAXATION.

The General Tax Act of 1903 (P. L. 1903, page 394, Art. 1, Section 3, paragraph 6) in terms exempts from taxation "Grave yards not exceeding ten acres of ground, cemeteries and buildings for cemetery use erected thereon."

The lands attempted to be assessed for taxation by the City of Newark are a part of the cemetery of the appellant, the Mount Pleasant Cemetery Company.

By its charter (P. L. 1844, page 19) the Mount Pleasant Cemetery Company was authorized to take and hold in fee a certain tract of land in the City of Newark fronting on the road leading to Belleville (and extending to the Passaic River) containing about fourteen acres *for such cemetery* and to add thereto for the purpose aforesaid other lands not exceeding forty acres in the whole; and it is further provided, "That the said corporation shall hold such tract or tracts of land *in trust* for the uses hereinafter mentioned," to wit:

First. The said corporation shall have power to lay out and divide said tract or tracts into sub-lots and may sell or otherwise dispose of said sub-lots in the said cemetery.

Second. The sub-lots shall be conveyed to the re-

spective purchasers in fee, and the purchaser of each lot \* \* \* shall have the exclusive use and occupation thereof only for the interment of deceased persons, with the common use of avenues and walks.  
\* \* \*\*

The managers are required to be lot owners, and are elected by the proprietors (lot owners) each lot in all cases to be entitled to one vote.

Under the authority of its charter the Mount Pleasant Cemetery Company purchased the fourteen acres of land mentioned in its charter, and also purchased, as authorized therein, other lands amounting in all to about forty acres "*for such cemetery.*"

All of the said forty acres were purchased and are now held by the managers of the cemetery company in trust, for the purposes specified in its charter, and in them has been vested and is still vested the care and management of *the said cemetery.*

The City of Newark has made no attempt to tax any part of the cemetery so held by the Mt. Pleasant Cemetery Company, except a tract of about six acres of land, purchased in 1881 through the Riparian Commissioners from the State of New Jersey; the land in question "*being directly contiguous to the main portion of the cemetery, and extending to the dock line in the Passaic River*" (Case, page 27, paragraph 4).

The cemetery company since 1881, the date of the Riparian Commissioners' deed, has been slowly filling in the property in question, and up to the time of the tax assessment of 1913 had filled in a space about three hundred feet wide at the north end, extending south about one hundred and thirty feet. This part was then being prepared for interments (Case, page 28, par. 4).

The rest of the tract had been partly filled. The lands in question had not at the time of the assessment been divided into lots, no lots had been sold, and no interments made therein (Case, page 25, par. 5).

1. A CEMETERY IS A PLACE OR AREA OF GROUND SET APART FOR THE BURIAL OF THE DEAD.

This is the definition of a cemetery given in the American and English Encyclopædia of Law, 2nd Ed., Vol 5, page 781; and is the definition adopted by the State Board of Taxation, and concurred in by the Supreme Court of this State in this case.

If we accept this definition as correct, the lands of the appellant, the Mount Pleasant Cemetery Company, which have been taxed by the City of Newark, are certainly free from taxation. By the charter of the company the land purchased by it, including the tract in question, was purchased for such cemetery, and the said land was directed to be held in trust for the purposes of a cemetery as above set out, and the care and management of the said cemetery was placed in the hands of managers, themselves lot owners and elected by the lot owners.

The lands once purchased became in name and in fact a cemetery. They can be sold and used only for the burial of the dead.

We cannot see how the land in question could have been more definitely and conclusively set aside for the burial of the dead. Certainly no act which could have been performed by the managers of the cemetery could have added anything to this setting aside of the lands for burial purposes.

It has been suggested that before the land in question could become a cemetery it was necessary that it be plotted, lots sold and burials made therein. If the setting apart of lands for burial purposes was a thing within the power of the managers of the cemetery, and the lands not so set apart by them were lands which could be sold, rented or otherwise used than for cemetery purposes, then this suggestion would carry weight, but it is not true. On the contrary, it is true that upon the passing of title to the cemetery com-

pany the land became a cemetery, forever set apart by the act of the Legislature for burial purposes.

2. UNDER THE TAX ACTS A CEMETERY IS MORE THAN A GRAVE YARD.

The Tax Act of 1854 (P. L. 1854, page 294, Section 5) provided:

“The following persons and property shall be exempt from taxation \* \* \* pews in churches, grave yards not exceeding ten acres of ground and all buildings erected thereon and used exclusively for charitable purposes.”

The Tax Act of 1866 (P. L. 1866, page 1078, Section 5) provided:

“The following persons and property shall be exempt from taxation \* \* \* pews in churches, grave yards not exceeding ten acres of ground, *cemeteries* and all buildings erected thereon used exclusively for charitable purposes.”

The Tax Act of 1894 (P. L. 1894, page 354, Section 5) is in the same words.

The Tax Act of 1903 (P. L. 1903, page 394, Section 4) provided:

“The following property shall be exempt from taxation under this act: Paragraph 6: Grave yards not exceeding ten acres of ground, *cemeteries* and buildings for cemetery use erected thereon.”

The clear intent of the Legislature we submit was to extend the tax exemption beyond the portions of the cemetery in which bodies were actually buried (grave yards) and to extend the exemption to the whole cemetery.

3. UNDER THE TAX ACT "CEMETERY LANDS" INCLUDE MORE THAN "CEMETERY LANDS ACTUALLY USED FOR CEMETERY PURPOSES."

The act to authorize the incorporation of rural cemeteries (P. L. 1851 to 54, Nixon's Digest, page 88) provides as follows:

"Section 10. The cemetery lands and property of any association formed pursuant to this act shall be exempt from all public taxes, rates and assessments, and shall not be liable to be sold on execution."

The act to authorize the incorporation of rural cemetery associations and regulate cemeteries (1 Comp. Stat. of N. J., page 375, Revision of N. J. 1877, page 100), provides, in Section 8:

"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, and shall not be liable to be sold on execution."

A supplement to the act authorizing the incorporation of rural cemetery associations, approved March 14, 1851, which supplement was approved March 14, 1879 (P. L. 1879, page 318) (Comp. Stat. N. J., page 386, Section 44, 1), purports to amend Section 10 of the rural cemetery act to read as follows:

"The cemetery lands and property of any association \* \* \* formed pursuant to this act *and actually used for cemetery purposes*, shall be exempt from all taxes, rates and assessments."

For purposes of taxation, therefore, the legislation has thus clearly distinguished between cemetery lands and cemetery lands actually used for cemetery pur-

poses. (The rural cemetery act of 1851 was repealed March 27, 1854, to take effect January 1, 1875, Rev., pp. 1120 and 1396, Section 469.)

In the case of *Newark vs. Mt. Pleasant Cemetery Co.*, 58 N. J. Law, 168, the question before this Court was the validity of an assessment for benefits laid upon the lands of the Mt. Pleasant Cemetery Company for the paving of Belleville avenue. In the agreed state of facts it was stipulated that the assessment "Covers a strip of land one hundred feet in depth, extending from Harvey street northerly along Belleville avenue four hundred feet, to the entrance of the cemetery—no part of the land so assessed has been sold by the cemetery company to lot owners."

Mr. Justice Magie, delivering the opinion of the Court and discussing the rural cemetery act and the other acts above cited, on pages 173, 174 and 175, says:

"Notwithstanding the absolute repeal in 1875 of the act of 1851, the Legislature in 1879 passed a supplement to that act. \* \* \* It recites at length the tenth section of the act to which it was declared to be a supplement, and it enacted that said section should be amended so as to read:

"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 rates and assessments.'

"The amendment consisted in the insertion of the words 'And actually used for cemetery purposes. \* \* \*' By express terms its provisions were limited in application to associations formed under the act of 1851, of which doubtless there were some in existence. If it were possible to infer an intent to apply its provisions to associa-

tions formed under the act of 1875, it is plain that the intent would be limited to such associations, and would operate to restrict their exemption to lands and property actually used for cemetery purposes. No intent can be perceived to make its provisions apply to cemetery associations otherwise incorporated, and if such was the object, the title of the act failed to express it."

If under an exemption of "cemetery lands and property" from taxes and assessments all lands of the Mt. Pleasant Cemetery Company, whether actually used for cemetery purposes or not, were exempt, certainly under the tax act of 1903, exempting cemeteries from taxation, the forty acres of land of the Mt. Pleasant Cemetery, authorized to be purchased by its charter for a cemetery, and which can be used only for burial purposes, is exempt.

#### I. A.

#### OTHER CASES IN THIS STATE.

*HOBOKEN vs. NORTH BERGEN*, 43 N. J. L., 146 (1881).

In this case the City of Hoboken by "An act to authorize the Mayor and Council of the City of Hoboken to sell or exchange lands known as the burying ground in the City of Hoboken," (P. L. 1857—498) was authorized from the proceeds of the sale of the burying ground in Hoboken to purchase other lands in such place or locality as the council might direct, and by said act it was provided that the lands so purchased:

"Shall be and the same hereby are set apart forever as a public burial place for the use of the inhabitants of the City of Hoboken."

Under the authority thus given the City of Hoboken purchased a tract of land of about seventeen acres, situated in the Township of North Bergen. By a supplement to the charter of Hoboken (P. L. 1862—55) the Mayor and Council were required,

“To procure the public burying ground of the said city to be laid out into avenues and lots, and to cause a map to be made of the same.”

The fourth section of the act provides as follows:

“That no public streets or roads shall hereafter be opened through the said cemetery grounds, and that *the said cemetery and all burial lots hereafter sold therein shall be and remain free from taxation and from sale under civil process.*”

The general tax act then in force (P. L. 1866, page 1078, Section 5) provided:

“The following persons and property shall be exempt from taxation \* \* \* pews in churches, graveyards not exceeding ten acres of ground, cemeteries, and all buildings erected thereon used exclusively for charitable purposes.”

Mr. Justice Parker thus states the facts: As rapidly as required the land within the boundaries of the tract was used for graves, but a part was not used at the time of the assessments. A small house had been built near the entrance to the cemetery, in which the superintendent resided, and it was also his office.

Adjoining the house are five acres within the boundaries of the seventeen-acre tract not yet used for burial purposes. This land the superintendent cultivated. He did not receive any money compensation for his services at the cemetery, but had the use of the five acres lying contiguous thereto.

The house and the five acres constitute the property assessed. Mr. Justice Parker thus continues:

“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 continually increases, and a reasonable quantity of land for future occupation should be provided. Land required for such purpose is not taxable. Seventeen acres is not an unreasonable quantity of land for a cemetery in the vicinity of the City of Hoboken.”

We submit that this case cannot be distinguished from the case now before the Court. In the Hoboken case the Legislature had authorized the City of Hoboken to purchase seventeen acres of land, and declared that the same should be set aside forever as a public burial place.

The charter of the Mount Pleasant Cemetery Company provides that that company might purchase forty acres of land for cemetery purposes, and that the lands should be held in trust for cemetery purposes only; that it could be sold only in lots, for the burial of the dead.

Both acts provided that no streets should be opened through the respective cemeteries, and both acts provided that the lands of each should not be sold under civil process.

The Hoboken act did not fix the amount of land which might be purchased. The Mount Pleasant Cemetery Company act fixed the amount to be so purchased at forty acres.

The Hoboken act referred to the lands so to be purchased by Hoboken as a “Cemetery.” The Mount

Pleasant Cemetery Act declared the lands to be purchased by it to be a "cemetery."

Mr. Justice Parker declared that notwithstanding the Hoboken act did not designate the amount of lands which Hoboken might purchase for a cemetery:

"Seventeen acres is not an unreasonable quantity of land for a cemetery in the vicinity of the City of Hoboken."

The Legislature declared that the Mount Pleasant Cemetery Company might purchase for its cemetery forty acres of land, and forty acres of land was certainly not an unreasonable quantity of land for a cemetery in a city of the size of Newark.

The Township of North Bergen attempted to tax five acres of land within the limits of the Hoboken cemetery. The five acres in question were under cultivation, and indirectly at least produced a revenue for the City of Hoboken. The City of Newark has attempted to tax six acres of land of the Mount Pleasant Cemetery Company from which there is no revenue.

The City of Hoboken was not doing anything to prepare its land for burial purposes. The Mount Pleasant Cemetery Company was preparing its land for burial purposes by filling in the same, and it is stipulated in the case that the northern part of the land in question "*was being prepared for interments*" (Case, page 28, Section 5).

But it is claimed that the final paragraph in the opinion of Mr. Justice Parker has to some extent weakened the force of this case.

"But if the premises assessed were not exempt under the general law, they are clearly not taxable by virtue of the provisions of the supplement of 1862 before mentioned. Before the date of the supplement the City of Hoboken had acquired

title to the whole of the seventeen acres for burial purposes. This entire tract was designated the public burying ground or cemetery of the City of Hoboken. The fourth section of the supplement referred to the whole tract. The language is that the said cemetery shall be and remain forever free from taxation."

We submit that the fourth section of the supplement of the charter of Hoboken (P. L. 1862—55) which reads:

"That the cemetery and all burial lots hereafter sold therein shall be and remain free from taxation."

is no broader in effect than the general tax act of 1866. (P. L. 1866, page 1078, Section 5), which exempted from taxation "graveyards not exceeding ten acres of ground, cemeteries and all buildings erected thereon."

In each case the cemetery was the thing exempt from taxation, and the exemption was not limited to lands in the cemetery actually used for cemetery purposes.

#### NEWARK vs. THE TOWNSHIP OF CLINTON, 49 N. J. Law, 370.

The facts in this case were as follows:

In September, 1869, the City of Newark purchased about sixteen acres of land in the Township of Clinton, fenced in two acres of this land, and used the same as a graveyard or potter's field. It removed from the old potter's field in the City of Newark and buried in this plot about two hundred bodies, and continued thereafter to bury its paupers in the two acres so fenced off and converted into a graveyard. From 1869 to 1881, with the removals so made and new

interments the city had used one acre of the land so set off. The city claimed exemption from taxes for the whole tract.

There was no authority for the purchase of the land and the establishment of the potter's field of the City of Newark outside of its own boundaries, unless such authority be found in Section 31, Paragraph 23 of its charter, which reads:

"The common council shall have power to regulate the burial of the dead, prohibit interments within such limits as it may prescribe, and purchase land for public burial places."

It was stipulated, however, in the case:

"That the city purchased the property for a burial place for the poor of the city, and that the intention was to use it for such purpose."

When the property was purchased by the city it consisted of a dwelling house and barn, together with seven acres of land under cultivation as a farm, one acre of orchard, and seven and one-half acres of woodland and lowland. Since the purchase of the property by the city and at the time of the assessment in question it was in the same condition and used for the same purposes as when it was purchased, except that one-half of an acre had been conveyed by the city to the Pennsylvania Railroad Company, and two acres had been fenced in and were used as a potter's field.

Mr. Justice Parker wrote the opinion of the Court and in it used this language:

"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 *vs.* Township of North Bergen, 14

Vr., 146, 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 \* \* \*.

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. 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."

The conclusion was that the assessment should stand upon the true value of the premises after excepting the two acres which had been fenced and was separated from the residue of the property by the

woodland, and which was in actual use as a potter's field.

We do not think there is anything in this decision which can be construed as criticizing the opinion by the same justice in the case of *Hoboken vs. North Bergen, supra*.

In no event could more than ten acres of the land in question have been exempt from taxation as a graveyard. There was no act of the legislature authorizing the City of Newark to purchase any defined plot or defined number of acres for a potter's field in the Township of Clinton or elsewhere. The lands in question were not dedicated to any particular use, so that they could not be sold or used for other purposes, and, in fact, the city had already sold a part of the lands purchased to the Pennsylvania Railroad. As held in the case, the lands did not constitute a cemetery and, as we remember the case, the City of Newark did not at the argument seriously contend that it was a cemetery.

SISTERS OF ST. ELIZABETH vs. CHATHAM, 51 N. J. L., 89.

In that case, which held that by force of the constitutional amendment adopted in 1875, requiring that:

"Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value."

all prior special or local laws exempting property from taxation were abrogated, unless they constituted irrevocable contracts, and all such subsequent laws are annulled.

Mr. Justice Dixon, in delivering the opinion of the Court on page 92, says:

"I find only one case that seems to favor an opposite view. In *Hoboken vs. North Bergen*, 14 Vroom, 146, Mr. Justice Parker appears to have

fortified his conclusion that a certain tract of land held by the City of Hoboken as a cemetery was exempt from taxation, by reference to a special law passed in 1862. And in *Newark vs. Clinton*, 20 Id., 370, he seems to speak of the judgment in *Hoboken vs. North Bergen* as resting on the special law. Since I sat with him in *Hoboken vs. North Bergen* I may be permitted to say that the judgment therein was fully warranted by the general provisions of the tax laws, which exempt from taxation the property of cities, and also cemeteries, and that the importance of the special law of 1862 lay in its recognition of the right of the city to hold the entire tract for the purposes of a cemetery. So far as my memory serves, the constitutionality of an exemption under a special law was not mooted in the case. The decision should not be regarded as maintaining such an exemption."

ROSEDALE CEMETERY ASS'N vs. LINDEN, 73 N. J. L., 421.

The question before the Court in that case was whether miscellaneous personal property, consisting of horses, hearses, carriages, agricultural implements, tools and other articles used exclusively in and about the cemetery of the Linden Cemetery Associations and for burials in the cemetery owned by them, were exempt from taxation.

Section 8 of the act entitled "An act to authorize the incorporation of rural cemetery associations and regulate cemeteries" (Gen. Stat., p. 349), provides that the "cemetery lands and *property* of an association formed pursuant to this act or otherwise incorporated \* \* \* shall be exempt from all public taxes, rates or assessments."

The Court held that section 8 of the cemetery act

did not exempt from taxation *personal property* of cemeteries, and Mr. Justice Garretson in his opinion says:

“It is in accord 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 and 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 the exemption from taxation of property not used for burial purposes, that has no associations connected with it, *and may be disposed of by the association at any time to any person for any purpose.*”

A reading of this section also discloses that all the provisions except that relating to taxation can refer only to real estate. The word ‘property’ as used in association with the words ‘cemetery lands’ would be reasonably and according to the well known rules of construction held to mean like property to cemetery lands, and could well refer to structures, monuments, gravestones and buildings erected upon the lands for cemetery purposes.

We think further that the only right of exemption from taxation which these prosecutors have must be found in ‘An act for the assessment and collection of taxes’ (P. L. 1903, page 394). This act is a general act upon the subject, and contains the declaration by the legislature what property in the State shall be subject to taxation and what property shall be exempt from taxation \* \* \*.

The tax act of 1903 exempts cemeteries under the following language:

‘Graveyards not exceeding ten acres of ground,

cemeteries and buildings for cemetery use erected thereon.'

It cannot be contended that the legislature is without power to change the method and manner of taxing the property of cemetery associations incorporated under the act of 1875. *Sisters of Charity vs. Chatham*, 23 Vr., 373.

The legislature has clearly expressed its intention to regulate the taxation of property of cemetery associations by the act of 1903. By that act there is no exemption from taxation of the personal property of cemetery associations. The only property of such associations exempt from taxation is cemeteries."

The decision of the case was, therefore, put upon two grounds:

First. That the word "property" as used in the cemetery statute did not include personal property.

Second. That the general tax act of 1903 is the only act in force regulating the taxation of cemeteries—that act by its terms not exempting personal property.

The case has no direct bearing upon the question now being discussed, and would not be referred to were it not for the fact that it seems to have been relied upon in the subsequent case.

**SAYRE vs. LOCUST WOOD CEMETERY  
COMPANY, 72 N. J. Eq., 821.**

In this case the Locust Wood Cemetery Company had purchased one hundred and twenty-five acres of land. Vice-Chancellor Leaming in his opinion says:

"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 9, 1889 (Gen. Stat. p. 356) authorizes one hundred and twenty-five acres to be held for cemetery purposes, and as that exact acreage was accordingly conveyed to the Locust Wood Cemetery Company, the entire one hundred and twenty-five acres will be exempt from sale. The 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 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.

This view of the legislative purposes led the Supreme Court, in *Rosedale Cemetery Association vs. Linden Township, supra*, to construe the word 'property' as used in this section, as inapplicable to personal property."

The learned Vice-Chancellor is incorrect in his assumption that there was no limitation upon the quantity of land which a cemetery company could own.

The fact is that the first general act passed on the

subject, "An act authorizing the incorporation of rural cemetery associations," approved March 14, 1851 (P. L. 1851, page 254, Section 4), expressly limited the amount of land to be purchased for a cemetery to twenty acres; and Section 10 of that act exempted from all public taxes and from sale on execution all of such cemetery lands.

Later, in 1883 (P. L. 1883, 123) the amount of lands which cemetery associations were allowed to purchase was increased to seventy-five acres, but in that act the legislature made the provision that not the whole of such cemetery lands, but only that portion of the property of such company not actually set apart and used for burial purposes should be subject to taxation.

By the act referred to in the opinion of the Vice-Chancellor the lands which cemetery associations are allowed now to purchase and hold were increased to one hundred and twenty-five acres, with the same provision that as to such lands not the whole cemetery should be exempt from taxation, but only such part of the property of such company actually set apart and used for burial purposes.

As we have previously shown, the act of 1879 (P. L. 1879, 318) amending Section 10 of the act of 1851, again provided that not the cemetery, but only such portion of the cemetery actually used for cemetery purposes, shall be exempt from taxes and from execution.

We think that the learned Vice-Chancellor has put too much reliance on the opinion of Mr. Justice Garretson in the case of *Rosedale Cemetery Association vs. Linden Township, supra*.

In that case Mr. Justice Garretson did hold that "property" as used in the cemetery act did not include personal property:

"Because the word 'property' as used in association with the word 'cemetery lands' would

reasonably and according to well known rules of construction be held to mean like property to cemetery lands, and could well refer to structures, monuments, gravestones and buildings erected upon the lands for cemetery purposes."

He however did say:

"It is not perceived how that wish is made effectual by the exemption from taxation of property not used for burial purposes, *that has no associations connected with it, and may be disposed of by the association at any time to any person for any purpose.*"

In the opening paragraph of his opinion he states:

"That the personal property taxed was in fact used exclusively in and about the cemeteries of the said associations and for burials in the cemetery."

The learned Vice-Chancellor did not have before him the question of taxation. Had he had in mind the history of the legislation on this subject and the facts in the case now under consideration by this Court, it may well be that he would have reached the conclusion that the "cemetery" of the Mount Pleasant Cemetery Company is the forty acres purchased by the company under its charter, forever set aside to be used only for the burial of the dead, and held in trust by the trustees under an act which does not allow profit to any of the proprietors or to the trustees, and that it is exempt from taxation.

RE. HILLSIDE CEMETERY ASS'N, 38 N. J.  
Law Journal, Vol. 38, No. 9.

The Board of Equalization of Taxes in August, 1915, passed upon the question of the assessment of

taxes upon cemetery lands for the year 1914. Mr. Jess in the memorandum filed says:

"The assessment attacked in this proceeding was levied by the Township of Union in Bergen County upon a portion of the land owned by the appellant. The entire tract comprises about forty-five acres, of which admittedly 29.15 acres have not been used for interments. The assessor conceived it to be his duty to assess these 29.15 acres and to exempt from taxation practically only that part in which burials had taken place. Upon appeal the Bergen County Board of Taxation sustained this assessment.

The Hillside Cemetery Association was incorporated in 1882 under the Cemetery Act. It then acquired the tract of land before referred to and proceeded to devote it to cemetery use. Over 1,500 bodies have been interred, but the interments have been confined to contiguous areas, with the exception of three or four burials which were made in a section of the cemetery remote from the other graves. The development of the cemetery seems to have followed the usual course of the utilization of public burial grounds, that is, lawns or sections have been laid out and definitely set apart for graves and burial plots as rapidly as immediate or reasonably anticipated use has warranted. The portion not yet utilized still is part of the cemetery. It is not used in any way inconsistent with the purpose for which it is held.

We do not see any difference in principle in the question involved in this appeal from that which we decided in *Harleigh Cemetery Association vs. City of Camden* (Report of Board of Equalization of Taxes for 1912, page 30). Relying upon the views there expressed and the authorities upon which they were based, we are obliged to

order a cancellation of the assessment under review."

It would seem from this that the Board has materially modified its views from those expressed when the case of the Mt. Pleasant Cemetery Company was before it.

In the Hillside Cemetery case, of forty-five acres purchased for cemetery purposes less than fifteen acres had been actually used for burial purposes. The Board nevertheless held that the remaining thirty acres in which no burials, or substantially no burials, had been made, were exempt under the tax act.

In the Mt. Pleasant Cemetery Company case, out of forty acres purchased and held for the cemetery, about thirty-four acres have been used for actual burials, and the remaining six acres are being filled in, preparatory to being used for burial purposes.

#### I-B.

THE TAX ACT OF 1903 WAS PASSED WITH KNOWLEDGE OF THE CONSTRUCTION PLACED BY THE COURTS UPON THE WORD "CEMETERIES."

The tax act of 1903, exempting cemeteries from taxation, is in substance a re-enactment of the tax act of 1866 (P. L. 1866, page 1078, section 5), and of the tax act of 1894 (P. L. 1894, page 354, section 5). It was passed subsequent to the decision in *Hoboken vs. North Bergen*, 43 N. J. L., 146, 1881, and after *Sisters of St. Elizabeth vs. Chatham*, 51 N. J. L., 89, 1888; and we submit it must be concluded that the legislature passed the act of 1903 with a knowledge of these decisions.

The same reasoning, we think, applies in cases where statutes have been adopted from other States,

after they have received judicial construction in the State from which they are adopted. In such cases the legislature is assumed, in adopting the statute, to adopt also the construction of the statute placed upon it by the sister State.

*Rutkowsky vs. Bozza*, 77 N. J. L., 724.

#### THE NEW YORK CONSTRUCTION OF THE CEMETERY ACT.

*Oak Hill Cemetery Ass'n vs. Pratt*, 29 N. E., 7. Court of Appeals, N. Y., December 1, 1891.

The question before the court was the construction of the New York Cemetery act (P. L. N. Y. 1847, Chapter 133, Section 10) which exempts from taxation cemetery lands and property of any cemetery association organized under that act.

The Cemetery Act of New York was passed four years before the Cemetery Act of New Jersey, and our own act is in substance an adoption of the New York act.

The Oak Hill Cemetery Association was incorporated under the act (Chapter 133, Laws of 1847, N. Y.) in March, 1889. It purchased fifty-four and one-half acres of land in the City of Rochester. Under the authority of the charter of the City of Rochester (1880, Chapter 14, Section 40), the Common Council passed an ordinance prohibiting burials in the cemetery of the Oak Hill Cemetery Association.

Judge Earle, in delivering the opinion of the Court, said:

“We have no doubt that, so long as the ordinance remains in force, no dead body can be buried in this cemetery, and yet we reach the conclusion that its land cannot be taxed under the law of 1847. Section 1 of that act provides that any number of persons, residing in this State, not less than seven, who shall desire to form 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,' may form a corporation as provided in that and the two following sections. Section 4 provides that any association incorporated under the act may take by purchase or devise, and hold, within the county in which the certificate of incorporation is recorded, not exceeding two hundred acres of land, to be held and occupied exclusively as a cemetery for the burial of the dead; and further provides that 'such land or such parts thereof as may from time to time be required for that purpose, shall be surveyed and sub-divided 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 in the Clerk's office of the county in which the land shall be situated.' These surveys and sub-divisions and maps thus authorized may be made from time to time, and all this is to be done before cemetery lots can be sold, and the lots are to be sold according to these surveys and maps; the section also provides that any association incorporated under the act may hold personal property not to exceed five thousand dollars; besides what may arise from the sale of lots.

Section 7, as amended by the act, Chapter 108 of the laws of 1879, provides that 'All lots or plots of ground designated on the maps filed as aforesaid, and numbered as separate lots by the corporation, shall be indivisible, but may be held and owned in undivided shares. \* \* \* One-half at least of the proceeds of all sales of lots or plots shall be first appropriated to the payment of the purchase money of the lands acquired by the association, until the whole purchase money shall be paid, and the residue thereof to preserving, im-

proving, and embellishing the said cemetery grounds, and the avenues or roads leading there-to and to defraying the incidental expenses of the cemetery establishment. And after the payment of the purchase money, and the debts contracted therefor, and for surveying and laying out the land, the proceeds of all future sales shall be applied to the improvement, embellishment, and preservation of such cemetery, and for incidental expenses, and to no other purpose or object, unless expressly authorized by law,' etc. Section 10 provided that 'The cemetery lands and property of any association, formed pursuant to this act, shall be exempt from all public taxes, rates and assessments, and shall not be liable to be sold on execution, or be applied in payment of debts due from any individual proprietor.'

Section 11 provides that 'Whenever the said lands shall be laid off into lots or plots, or any of them shall be transferred to individual holders, and after there shall have been an interment in a lot or plot so transferred, such lot or plot, from time of such first interment, shall be forever thereafter inalienable, and shall, upon the death of the holder or proprietor thereof, descend to the heirs at law of such holder or proprietor, and to their heirs at law forever.'

It is thus seen, by this brief review of the provisions of the act, that the land of the relator is held exclusively for cemetery purposes, and that it cannot be devoted to or used for any other purpose. It has no power to sell any of its land, except to persons who desire it for burial purposes, and all of its land, the moment it acquires it, and before a dead body is buried therein, is absolutely exempt from all taxation.

The cemetery land of such a corporation not only, but all its property, is thus exempt. So

long as Oak Hill Cemetery exists as a corporation it must hold its property exclusively for cemetery purposes, and while burials cannot now be made therein, the ordinance prohibiting them may be repealed or modified at any time, so as to allow them.

There is no provision in the statute that its land shall be exempt from taxation only so long as burials are authorized to be made therein. The exemption is absolute. \* \* \*

It cannot be well contended that the cemetery lands exempted from taxation under the act of 1847 is only such portions of the land purchased for cemetery purposes, as are surveyed, mapped, and laid out into lots under Section 4.

The purpose of those provisions is the convenience of sale, the security of titles, and the benefit and protection of lot owners. We have no reason to suppose from any language used in the act that it was the intention of the Legislature that any portion of the cemetery land not laid out into lots, but which must nevertheless be held exclusively for cemetery purposes, should be subject to taxation."

The New York Cemetery Act of 1847 and the New Jersey Cemetery Act of 1851 are substantially identical in title and in provisions, section by section; except that by the fourth section under the New York law cemetery associations may hold two hundred acres of land, and under the New Jersey law only twenty; and in the New York act there is an express provision that the act may be repealed at any time. The tenth section of the New Jersey act, now the 8th section of the act of 1875, is a *verbatim* reproduction of the tenth section of the New York act.

## POINT II.

*By virtue of the charter of the company granted in 1844 and the supplement thereto granted in 1861, which constitute an irrevocable contract between the Cemetery Company and the State, and any impairment thereof is in violation of the constitution of the United States and the constitution of the State of New Jersey.*

1. Mount Pleasant Cemetery Company of Newark was incorporated in 1844 by an Act of the Legislature, approved January 24th, 1844, Laws of 1844, page 19, and Section 6 of its charter as appears in the Laws of 1844 provides, "That the premises, burial lots, monuments and other erections and fixtures of said cemetery shall not be subject to any assessments, taxes or fines unless otherwise ordered by the Board of Chosen Freeholders of the County of Essex, or liable to be seized upon, distrained, sold or otherwise subject to any process of law, or assessments under any insolvent law whatever, except for encumbrances existing at or previous to the passage of this act."

2. A supplement to this charter was enacted by the Legislature and approved February 9th, 1861. This supplement, including the preamble, reads as follows:

A Supplement to an Act entitled, "An Act to incorporate the Mount Pleasant Cemetery Company, of Newark."

WHEREAS, by the said act it was enacted that the premises, burial lots, vaults, monuments, and other erections and fixtures of said cemetery should not be subject to any assessments, taxes or fines unless otherwise ordered by the Board of Chosen Freeholders of the County of Essex; and whereas, the said cemetery company are endeavoring to create a fund from the surplus proceeds of the sale of the lots of said cemetery, to provide means to preserve and maintain its

enclosures and buildings and to pay the expenses of a proper care of the same; and whereas, doubts have arisen whether by said act such surplus proceeds are exempt from taxes and assessments—therefore, to remove such doubts,

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, that the property, assets and effects of the said cemetery company, which have accrued or may accrue, or be derived from the sale of lots in said cemetery, are hereby exempted from taxes and assessments, and that the said surplus proceeds shall be held and used for the purposes above mentioned.

2. And be it enacted, that this act shall take effect immediately.

3. By its charter of 1844 the Cemetery Company was authorized to acquire land not exceeding forty acres, and the portion sought to be taxed is a part of the forty acres so authorized and acquired. The previous purchases had been of the upland and extended from Belleville avenue to the Passaic River. This purchase of 1881 was made from the funds of the cemetery derived from the sale of the burial lots and plots in that portion of the cemetery previously purchased. State of the Case, page 28.

4. The charter as passed in 1844 exempts the premises of the cemetery from taxation unless otherwise ordered by the Board of Freeholders of Essex County but this exemption is enlarged by the supplement of 1861. This supplement in its preamble recognizes the fact that by the act of 1844 the premises of the cemetery were taxable when so ordered by the Board of Freeholders and that doubts had arisen as to the taxability of the proceeds of sale of lots and then proceeds to expressly declare that the *property, assets and effects* of the cemetery which have accrued or may accrue, *or be derived* from the sale of lots, are ex-

empted from all taxes and assessments, and that the surplus proceeds should be held and used, &c.

No mention is made of subjecting the *property, assets and effects* so derived to the provision in reference to the action of the Board of Freeholders, although in the preamble to this supplement of 1861 it was recognized that the *premises, burial lots, monuments and other erections and fixtures* were so subject.

The Act of 1861 is in a measure in the nature of a legislative interpretation of the Act of 1844 and declares that while the *premises, burial lots, monuments and other erections and fixtures* are liable to be taxed when it is so ordained by the Board of Freeholders, yet the *property, assets and effects derived* from the proceeds of sale of sub lots are not taxable and that without regard to any action of the Board of Freeholders.

To hold otherwise would be virtually to destroy the force of the 1861 supplement. It cannot be said that the Legislature did not have in their minds the freeholder limitation in the 1844 act for they expressly refer to and recite it and in spite of it enact that certain property, &c., shall not be subject to tax. They do not say unless otherwise ordered by the Board of Freeholders, but "are exempted from all taxes and assessments."

If it had been the intention on the part of the Legislature in 1861 to have placed the property acquired pursuant to the provisions of the supplement under the same taxing clause as that contained in the act of 1844 they would have so stated and there would have been no necessity for inserting the tax exemption clause in the 1861 supplement.

It must be conceded that the Legislature of 1861 had a reason for the insertion of the tax exemption clause in their supplement and that they put it there for a purpose and that purpose was to free from tax-

ation without regard to any action of the Board of Freeholders the future property acquisitions of the Cemetery Company when purchased by funds derived from the sale of lots, which as a matter of fact is the only means the cemetery has of accumulating funds for the purchase of property, it cannot use its trust funds for that purpose. To the extent of subsequently acquired property the supplement of 1861 does away with the limitation in the act of 1844 relating to the Board of Freeholders. To hold otherwise would be to render invalid a portion of the 1861 act and defeat the expressed intention of the Legislature. Both acts should stand.

This leaves two classes of property in the ownership of the Cemetery Company.

A. That portion originally acquired by virtue of the Charter of 1844 which amounts to about thirty-four acres, and which when so ordered by the Freeholders is liable to taxation, unless exempt by virtue of other laws.

B. That portion subsequently acquired by means of the funds derived from the sale of burial lots, and this is exempt from taxation by virtue of the provisions of the 1861 act.

This construction gives effect to both acts in full and carries out the expressed legislative intent and is directly in line with the decisions cited in the opinion filed by the State Board of Taxation, and approved by the Supreme Court, viz. 53 N. J. L., 51, and 54 N. J. L., 421, and in fact follows along the line of argument used by Judge Van Syckle in 54 N. J. L., 421. "A statute amended is to be understood in the same sense exactly as if it had read from the beginning as it does as amended."

Applying this rule the charter of the cemetery would read somewhat as follows: "The premises, burial lots, vaults, monuments and other erections and fixtures are not subject to taxes, etc., unless other-

wise ordered by the Board of Freeholders, provided however that the property, assets and effects of said cemetery which have accrued or may accrue, or be derived from the sale of lots therein, are exempted from all taxes and assessments."

There are two distinct, separate and easily distinguishable classes of property and derived from different sources.

5. The charter of the Mount Pleasant Cemetery Company is not affected by the act of 1846 concerning corporations.

That act, section 6, provided that the charter of every corporation which should thereafter be granted by the Legislature, should be subject to alteration, suspension and repeal, in the discretion of the Legislature.

A. This was a general act concerning corporations and did not affect charters granted previous to 1846.

The cemetery charter dates from 1844 and the supplement of 1861 relates back to that time, is incorporated in it and the whole charter reads as though the 1861 supplement had been in it from the beginning.

The supplement of 1861 was not a new charter within the purview of the act of 1846, though it did enlarge it, and the act of 1846 cannot affect a supplement to a charter granted previous thereto.

*Little vs. Bowers*, 46 N. J. L., 300.

*New Jersey vs. Yard*, 95 U. S., 104.

B. This act of 1846 was not a constitutional prohibition, and was not binding upon subsequent legislatures unless such subsequent legislatures were willing to have it so.

One legislature cannot by a mere "act" prevent a subsequent legislature from doing as it sees fit. Legislative powers cannot be abridged in this manner.

If a subsequent legislature passes an "act" which is contrary to an "act" passed by a previous legislature the latest "act" takes precedence and the first "act" falls.

So in this present case if it is contended that the legislature could not grant any charter which should not be subject to alteration, suspension and repeal, the answer is that the Legislature of 1861 did do this very thing, and they had a right to do it; assuming for the purposes of the argument that the act of 1861 does not relate back to and become a part of the act of 1844. This 1861 legislature said to the Cemetery Company go ahead and sell your lots and the proceeds so derived shall not be subject to taxes. A contract was made without regard to the act of 1846 and is binding on the parties to it. The consideration to the State in this 1861 act was of precisely the same character as was involved in the act of 1844 and which this Court has held to be a sufficient consideration to support an irrevocable contract.

The Legislature may enter into an irrevocable contract as to taxation with a private corporation, which is not subject to alteration by a subsequent Legislature by virtue of the right reserved in the act of 1846, page 16.

*Hanover vs. Camp Meeting*, 76 N. J. L., 65; *Id.* 827, cited with approval in *Seton Hall vs. South Orange*, 86 N. J. L., 365, on page 367.

A leading case on this point and on the question of an irrevocable contract is the one cited above, of the United States Supreme Court, viz. *New Jersey vs. Yard*, 95 U. S., 104.

This was a case in which was directly involved the question of the taxation of the Morris & Essex Railroad. It was on an appeal from a decision of the Court of Errors and Appeals of New Jersey.

The Morris & Essex Railroad was incorporated by

an act of the Legislature of New Jersey, passed January 29, 1835, and the fifteenth section of its charter provided that as soon as the net proceeds of said railroad amounted to seven per cent. on its cost, the corporation should pay to the treasurer of the State a tax of one-half of one per cent. on the cost of said road, \* \* \* *provided, that no other tax or impost should be levied or assessed upon the corporation.*

The twentieth section of the charter *reserved* to the Legislature the *right to alter, amend, or repeal the act, whenever it should think proper.*

A supplement to the charter, passed March 2, 1836, gave power to build branch and lateral roads and repealed the twentieth section of the original charter; *but reserved the right of the Legislature to alter or amend the supplement, or the act to which it is a supplement, whenever the public good may require it.*

On February 14, 1846, a general act relating to corporations was approved, which provided that the charter of every corporation thereafter granted by the Legislature should be subject to alteration, suspension and repeal in the discretion of the Legislature.

On March 23, 1865, Laws of 1865, page 555, another supplement to the Morris & Essex charter was approved which authorized the building of a branch road, &c. The third section of this supplement provides that the tax of one-half per cent. provided by the original act of incorporation to be paid etc., shall be paid at the expiration of one year from the time when the road shall be open and in use to Phillipsburgh, etc.; *which tax shall be in lieu and satisfaction of all other taxation or imposition whatsoever by or under the authority of the State, or any law thereof; provided the Railroad Company should file an assent with the Secretary of State. This assent was duly filed.*

On March 5, 1867, Laws of 1867, page 144, another supplement to the charter was approved which among

other things provides that *no tax, etc., shall be imposed upon any property purchased, held or used by the company for the purposes of its charter, or any of the supplements thereto, except the tax of one-half of one per cent.*

On April 2, 1873, "an act to establish just rules for the taxation of railroad corporations, and to induce their acceptance and uniform adoption," was passed.

This act increased the rate of taxation upon railroad companies, and an attempt was made by virtue of its provisions to tax the real estate of the Morris & Essex Railroad. This tax assessment was sustained by the New Jersey Supreme Court and afterwards affirmed by the New Jersey Court of Errors and Appeals.

The Court will observe that this Morris & Essex case presents all of the features now before the Court in this present case as far as the charter, supplement, act of 1846 and general tax laws are concerned.

The original charter passed in 1835, and the supplement of 1836 contained a tax limitation and a provision that no other tax should be assessed. It also *reserved to the Legislature the right to alter or amend.* In the original charter of the Mount Pleasant Cemetery Company the right was reserved to the Board of Freeholders to declare the land of the cemetery taxable.

In 1846 the general act was passed that all charters thereafter granted should be subject to the legislative alteration etc.

In the 1865 supplement to the Morris & Essex charter a tax rate on the railroad was fixed which was declared *to be in lieu and satisfaction of all other taxation or imposition whatsoever by or under the authority of the State,* and this supplement did not contain any reservation of the legislative rights as set out in the original charter, *but it did provide that it was subject to all the restrictions, limitations, and*

*conditions of the original act and supplements which might be applicable to the powers and franchises conferred by this supplement.*

The supplement of 1861 to the charter of the Cemetery Company provided that the *property, assets and effects*, etc., which have accrued, or may accrue or be derived from the sale of lots, etc., are exempted from all taxes and assessments. And makes no reservation of the power given to the Freeholders in the act of 1844.

An attempt was made to tax the real estate of the railroad under the railroad act of 1873 and an attempt is now made to tax the real estate of the Cemetery Company under the tax act of 1903.

The United States Supreme Court, Mr. Justice Miller writing the opinion, goes into the questions at length and expressly holds that a statute of a State, as distinguished from a constitutional prohibition, which declares that all charters of corporations granted after its passage may be altered, amended or repealed by the Legislature, does not necessarily apply to supplements to an existing charter which were enacted subsequently to the statute.

Nor does a provision, which declares that "this supplement, and the charter to which it is a supplement, may be altered or amended by the Legislature," apply to a contract with the corporation made in a supplement thereafter passed.

The point that the original charter, and all subsequent amendments and supplements, were to be treated merely as parts of one act, and that this reserve of the right to alter or amend became a part of every new law which had reference to that railroad company was expressly raised and argued by the counsel on both sides and is discussed by the Court in its opinion and the two cases of *Bank vs. Assessors*, 30 N. J. L., 22, and *State vs. Bergen*, 34 N. J. L., 439, considered.

The Court however declined to agree with the proposition and held that the supplement of 1865 constituted an irrevocable contract with the State. That the act of 1846 and the reservations in the original charter of 1835 and in the supplement of 1836 did not apply, and that the contract of the supplement of 1865 was superior to the railroad tax act of 1873.

This case has been followed by the United States Courts ever since, and has been cited with approval a large number of times.

6. It has been decided in this State by the Court of Errors and Appeals that the charter of the Mount Pleasant Cemetery Company is irrevocable, that it was a contract with the State and could not be impaired by an act of the Legislature without the consent of the incorporators.

*Mount Pleasant Cemetery vs. Newark*, 23 Vr., 539.

The Chief Justice in his opinion in this case says, "That a charter of this kind constitutes a contract between the State and the corporation has not been, and could not be, denied. Since the decision of the Dartmouth College case, there has been no doubt upon that subject; nor has it been, nor can it be, any more in doubt, that by force of the pertinent provision of the Constitution of the United States such contract cannot be impaired by the Act of the Legislature without the consent of the incorporators."

He also says on page 542 and 543: "Here we have this legislative promise of exemption set forth in the original charter of this company, it was made while the matter was *in fieri*, and it was obviously an inducement to the corporation to accept the charter and incur the expenditures incident to the enterprise, and on the other side the Legislature had for its consideration the expectation of the benefits that might result from such expenditures. Such a situation has

always, so far as has been observed, been held to place the public and the members of the corporation in the attitude of contracting parties; it does not seem to be possible to treat the question as an open one."

7. By virtue of its charter, which includes the Acts of 1844 and 1861, the Cemetery Company has gone on selling its burial lots and acquiring other property. It has, to quite an extent, filled in the premises sought to be taxed and while this filling is not complete yet a portion at the north end of about three hundred feet by about one hundred and thirty feet is being prepared for interments. Money has been spent upon it as the growth and needs of the cemetery, as well as the development of the plans of the managers seemed to demand.

Relying on the declarations of the State as expressed by the Legislature the Cemetery Company has accumulated its money and purchased its property. In short the State said to the cemetery, "If you save your money and buy more property you need not pay any taxes on the property you so buy." The cemetery agreed to the proposition, saved its money and bought other property for its purposes. It was not a gratuitous privilege extended to it, but a contract for a valuable consideration made between the State and the Cemetery Company and was not affected by the Tax Act of 1903, or the constitutional amendments of 1875.

Art. 1, Sect. 10, U. S. Constitution.

Art. 4, Sect. 7, parag. 3, N. J. Constitution.

This property even in its present condition is of great benefit to the cemetery as a whole. It is a protection against the encroachment of nuisances, against factories and establishments which by their smoke and fumes would injure the monuments and gravestones in the eastern part, certainly, if not in the whole cemetery, and the fact of its ownership by the cemetery

enhances the value of the whole tract from Belleville avenue to the river.

The contention that every portion of a "cemetery" must be used for "burial purposes" only is too narrow. What about the walks, drives, lawns and ornamental places? Along the street fronts a wide strip is needed in which is no burial in order to protect and beautify the rest of the property. So with the river front, it is a protection and a place of great possible beauty. True, at the present time owing to the condition of the river and the fact that the city has not improved Herbert Place there is not much beauty, yet the possibility and the protection are there, and when the river becomes cleaned and the Passaic as of yore flows along, this portion will be one of the beauty spots of the cemetery.

### POINT III.

It is contended by the city that the land in question cannot now be used for burial purposes under the provisions of the Cemetery Act as found in Laws of 1896, page 46. It is submitted that a true and fair construction of this act of 1896 will show that it cannot apply to the condition of affairs in the Mount Pleasant Cemetery now under consideration by this court. This property which is sought to be taxed by the City of Newark has been an integral part of the cemetery grounds since 1881, which was the date of the last deed to this particular piece of property. The cemetery had been perfecting its title to this piece in question for some time prior to 1881. It had received two wharf licenses, and a deed from claimants to the title prior to the deed to the Cemetery Company from the State of New Jersey. Under the regular charter of the Cemetery Company it was authorized to acquire land not to exceed forty acres, and at the time

in 1881 of the deed for the piece under consideration, its holdings including this piece just about reached the total of the forty acres (State of the Case, page 28). Subsequent legislation has increased the right of cemeteries to hold land, first to seventy-five acres, and now to one hundred and twenty-five acres. The Act of 1896 was intended, as a careful examination of its wording will show, to apply first to a situation where a new cemetery was contemplated; and second to an enlargement of an already existing cemetery. It may be that if after the passage of this Act of 1896 the Mount Pleasant Cemetery Company had attempted to enlarge its holdings by the purchase of additional land, it would have been necessary to obtain the consent of the Common Council and of the Board of Health; but this act does not apply where the cemetery already under lawful authority was the owner of property which was a part of the cemetery grounds and premises. If as strict a construction of this act, as seems to be insisted upon by the city, was made, it would forbid the cemetery from actually using for burial purposes any portion of its property that had not, prior to the passage of this act of 1896, actually been conveyed to individual lot owners; in other words it would not under such a construction be allowed to sell any portion of its property for burial purposes without going to the Council and Board of Health for their consent to the sale of each particular lot. We do not suppose that even the counsel for the city would contend for a moment that such was intended to be the effect of this act of 1896. If it is contended that the words in the act "Lands not now used for cemetery purposes" are relied upon, this it seems to us would be begging the question, as it is part of the point at issue in this proceeding whether the words "cemetery purposes" should be restricted to "burial purposes," it being insisted upon by the cemetery that "cemetery purposes" is broader than "burial purposes." It does

not seem that it makes any difference whether at the present moment the property sought to be taxed is in such a condition that it can now be actually used for an interment, it is sufficient if it is used for cemetery purposes, which can include protection, improvement, preservation and the like of the balance of the cemetery property. It is not intended on behalf of the cemetery to claim that an interment can be made in this piece of ground or any other piece, unless the sanitary requirements of the State in reference to interments are complied with. This land under consideration, the court will remember, extends from high water mark to the dock line. It is, of course, subject to the right of way of the Erie Railroad across a portion of it, and owing to this fact would not be developed as soon as the other portions of the cemetery property more favorably located. This act of 1896 is one of a series of acts in reference to the question of cemeteries, all of which were intended to regulate the location of new or the enlargement of existing cemeteries. The main act having this in view will be found in volume 1 of Compiled Statutes of New Jersey, page 380, section 27, and contains a reference to the laws of 1885, page 166; the Laws of 1904, page 498; and of 1905, page 112. It is submitted that inasmuch as the Cemetery Company by its charter had a right to purchase this land for cemetery purposes, and had actually purchased it, and was in possession of it, and made it a part of its property prior to the passage of this Act of 1896, the Legislature could not by this act deprive the cemetery of its property, as it would be doing if the construction asked for by the counsel for the city of this act was to prevail. The purpose of the act was to prevent any Cemetery Company from going ahead and enlarging its boundaries without regard to the general public and to the sanitary conditions which are under the direction of the Board of Health.

Hence this act of 1896 has no such bearing on the point at issue in this proceeding as is contended for by the city. This is not an attempt to enlarge the holdings or powers of the cemetery which the Act of 1896 was intended to regulate.

If the Act of 1896 were effective to prevent the use of the lands in question for burial purposes without the consent of the Common Council, the Board of Health and the Mayor of the City of Newark, it would in no way affect the question of taxation.

In the case of *Oak Hill Cemetery Co. vs. Pratt, supra*, Judge Earle, in discussing the identical question, says:

“So long as Oak Hill Cemetery exists as a corporation it must hold its property exclusively for cemetery purposes, and while burials cannot now be made therein, the ordinance prohibiting them may be repealed or modified at any time, so as to allow them.

“There is no provision in the statute that its land shall be exempt from taxation only so long as burials are authorized to be made therein. The exemption is absolute. \* \* \* ”

**POINT IV.**

The attention of the Court is also called to the peculiar condition of affairs that would result if it should be held that this property of the Cemetery Company was subject to taxes. Can such taxes be enforced or collected? The charter of the company granted in 1844 in express terms declares that the premises, etc., shall not "be seized upon, distrained, sold, or otherwise subject to any process of law" and the Freeholders of Essex County have no control over this absolute legislative prohibition. Will the Court establish by its decree a condition which the Legislature has prohibited it from enforcing?

**POINT V.**

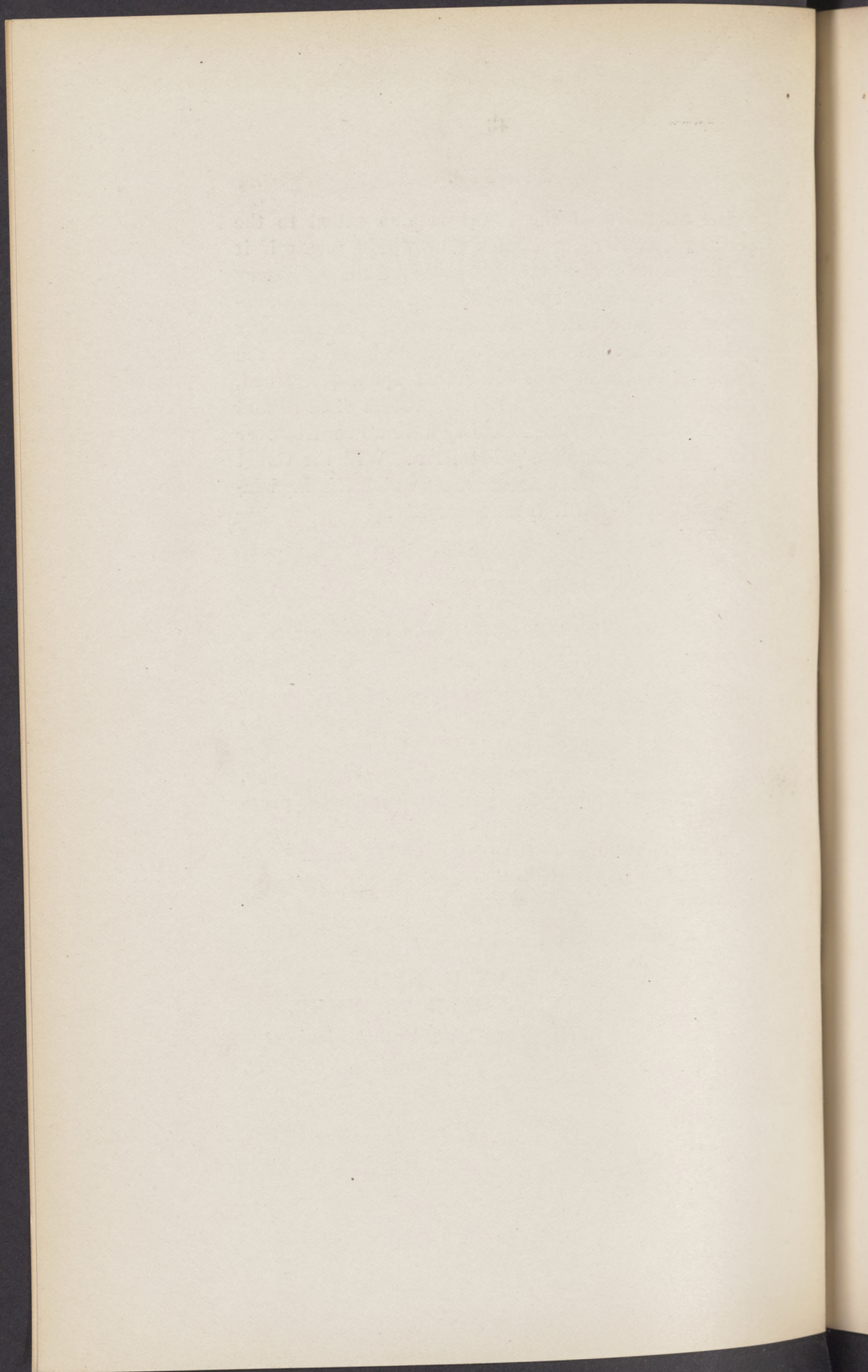
Briefly the claim is that this land is exempt from taxation.

One, by virtue of the provisions of the Tax Act of 1903. That the land is an integral part of the cemetery premises and is likewise necessary for the protection and preservation of the cemetery, its graves, monuments, structures and other properties.

Two, by reason of the irrevocable charter contract between the State and Mount Pleasant Cemetery Company.

The tax should be set aside.

HENRY H. DAWSON,  
CHANDLER W. RIKER,  
*For Appellant, Mount Pleasant  
Cemetery Company.*



## New Jersey Court of Errors and Appeals

MOUNT PLEASANT CEMETERY COM-  
PANY OF NEWARK,

*Prosecutor-Appellant,*

*vs.*

THE MAYOR AND COMMON COUNCIL  
OF THE CITY OF NEWARK, *et al.*,

*Defendants-Respondents.*

*On Certiorari.*

*Appeal from  
Supreme  
Court.*

### **Brief of Defendant The Mayor and Common Council of the City of Newark.**

This is an appeal from a decision of the Supreme Court affirming an assessment of taxes upon lands of the appellant for the year 1913.

The general character of the land assessed is described in paragraph 4 of the Agreed State of Facts (Case, p. 27).

This land was not, at the time of the assessment, any part of the cemetery of the appellant. This fact takes it out of the exemption contained in Section 3, Sub-division 6 of the General Tax Act, which exempts: "Graveyards not exceeding ten acres of ground, cemeteries and buildings for cemetery use erected thereon."

A cemetery is defined to be "A place or area of ground set apart for the burial of the dead."

The land in question has not been set apart for that purpose. It could not at the date of the assessment have been so used.

The exemption contained in the charter of the cemetery company does not apply to the land in question (see Case, p. 31).

The exemption contained in the original charter of the company was followed by the words, "unless otherwise directed by the Board of Chosen Freeholders of the County of Essex," and the supplement of 1861 exempting property, assets and effects of the company which had accrued or might accrue or be derived from the sale of lots in the cemetery, should be exempt from taxation, did not contain any such limitation.

It is admitted that the land in question was purchased with proceeds received from the sale of lots in the cemetery (see Case, p. 28). There can be no exemption, because the property is not "a place or area of ground set apart for the burial of the dead."

The special immunity granted by the Tax Act applies to *cemetery lands*, that is, lands used for the burial of the dead. The land in question was not at the date of the assessment used for the burial of the dead.

We come now to consider the case of *Mount Pleasant Cemetery Company v. Newark*, reported in 52 N. J. L., page 539. In that case the Supreme Court held that a stipulation in a cemetery company's charter that no assessment should be imposed on the burial ground until the Board of Freeholders of the County should order otherwise, was obligatory and valid. This case was affirmed in 58 N. J. L. 168.

This case was decided prior to the Tax Act of 1903, which contained the exemption above quoted. Since the adoption of the Constitutional Amendments of 1875 there can be no exemption of property from taxation by force of special or local statutes, except in the case of irrepealable con-

tracts. The General Tax Act alone contains authority for exemption.

The provision of the General Tax Act operated as a repealer of so much of the charter of the prosecutor as granted it exemption from taxation.

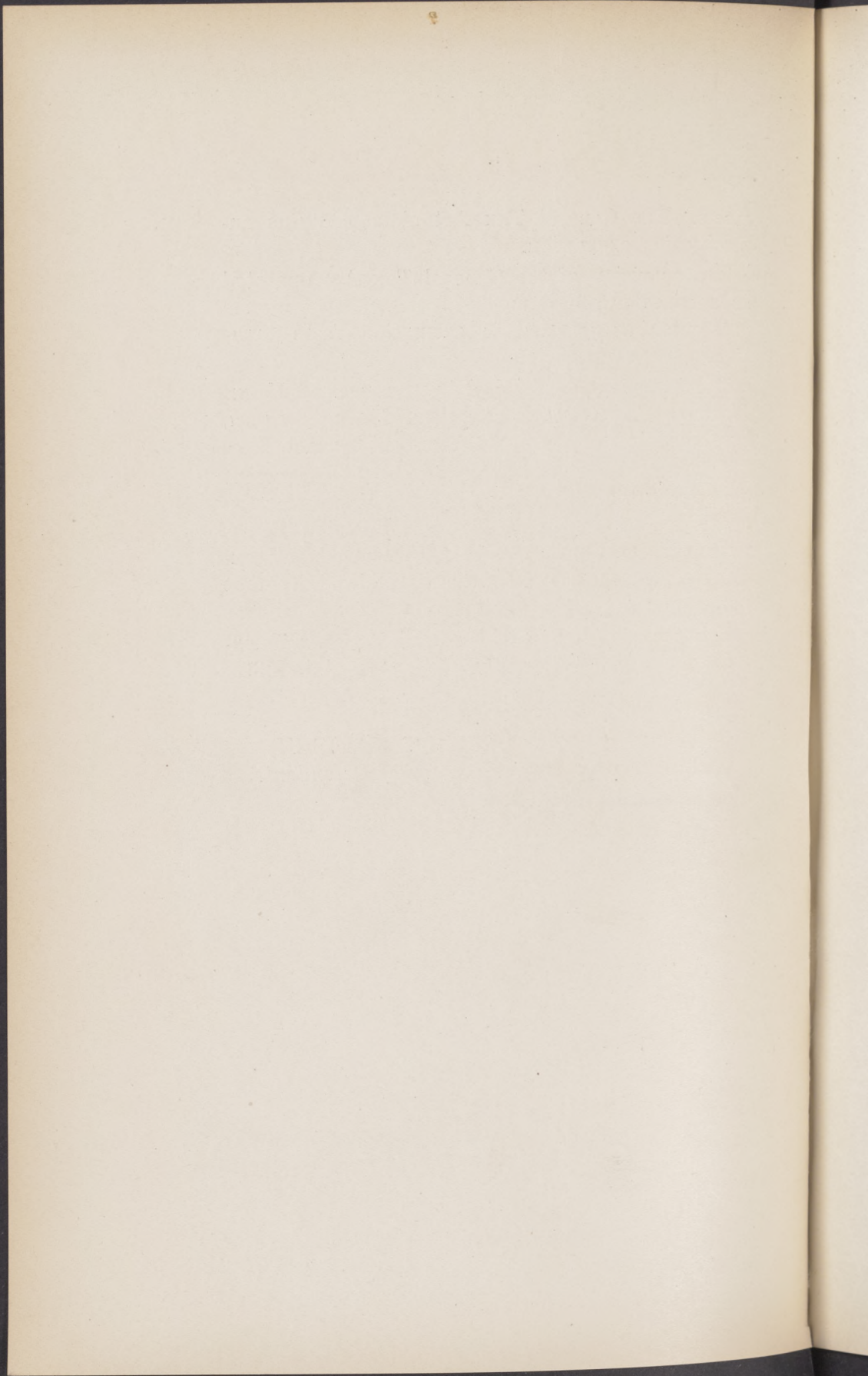
The precedent established by the case of *Mount Pleasant Cemetery Company v. Newark, supra*, has been abrogated by the General Tax Act.

It is not necessary to consider in this argument the appellant's contention for exemption under the provisions of the General Act Concerning Cemeteries since the General Tax Act repeals all exemptions except those expressly allowed by that act.

This was decided in the case of *Hanover Township v. Camp Meeting Association*, 68 Atl. 753.

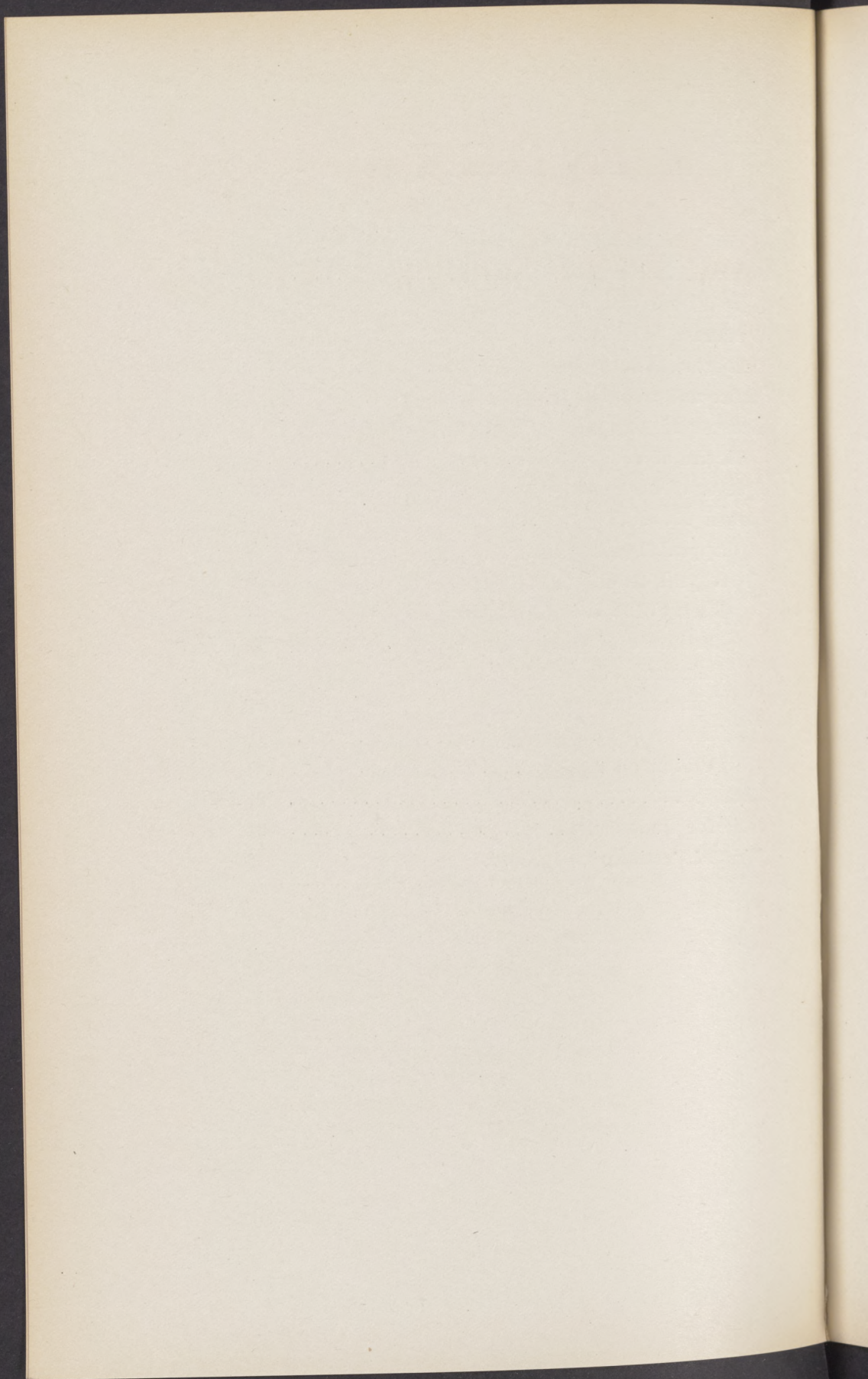
Respectfully submitted,

HARRY KALISCH,  
*Attorney of Defendants.*



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**Notice and Grounds of Appeal.**

Filed September 16, 1915.

# New Jersey Supreme Court.

MOUNT PLEASANT CEMETERY COM-  
PANY OF NEWARK,

*Prosecutor,*

*vs.*

THE MAYOR AND COMMON COUNCIL  
OF THE CITY OF NEWARK, *et al.,*

*Defendants.*

*On  
Certiorari.*

10

*To Harry Kalisch, Esq., Attorney of Defendants:*

Take notice, that the prosecutor appeals to the  
Court of Errors and Appeals from the whole of the  
judgment entered in this cause on the following  
grounds:

20

1. Because the judgment of the Supreme Court is  
in violation of Article 1, Section 10, of the Constitu-  
tion of the United States, by impairing the obligation  
of the contract arising out of the grant, acceptance  
and exercise of the charter powers conferred upon the  
prosecutor, by terms of which contract the prosecutor  
was exempted from assessment and from taxation  
upon the lands in question.

30

2. Because the judgment of said Supreme Court  
affirming the decision of the State Board of Equaliza-  
tion of Taxes is erroneous in that it holds that the  
legislative exemption from taxation and from assess-  
ment upon the lands in question claimed by the  
prosecutor has been annulled both by force of the con-  
stitutional amendment of 1875, requiring property to

40

*Notice and Grounds of Appeal.*

be assessed for taxes under general laws and by uniform rules according to its true value, and the operation of the Act of 1903, entitled, "An Act for the assessment and collection of taxes," approved April 8, 1903; and because if this constitutional amendment and the tax act of 1903 properly construed provide that the lands in question of the prosecutor are taxable, then they violate Article 1, Section 10, of the Constitution of the United States, in that they impair the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the prosecutor.

3. That the judgment of the said Supreme Court holding that the lands in question are taxable under an act entitled, "An Act for the assessment and collection of taxes," approved April 8, 1903 (Laws 1903) p. 394, Chapter 208, and the supplements thereto and amendments thereof, violates Article 4, Section 7, paragraph 3 of the Constitution of the State of New Jersey, and also violates Article 1, Section 10, of the Constitution of the United States, by impairing the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the prosecutor by its charter and supplements thereto.

4. Because the prosecutor, a corporation organized as a cemetery under an Act of the Legislature of New Jersey entitled "An Act to incorporate the Mount Pleasant Cemetery Company of Newark, in the County of Essex," approved January 24th, 1844 (Laws of 1844, page 19, section 6) and by the supplement to an act entitled "An Act to incorporate the Mount Pleasant Cemetery Company of Newark," which supplement was approved February 9, 1861 (Laws of 1861, page 28, section 1) obtained an irrevocable exemption from assessment and from taxation of the property, assets and effects of the said Cemetery Company which have accrued or may accrue or be derived

*Notice and Grounds of Appeal.*

from the sale of lots in said cemetery, and that the property sought to be assessed for taxation was so derived from the sale of lots in said cemetery, and the judgment of the Supreme Court holding such legislative exemption to be repealable is erroneous.

5. Because the prosecutor performed service and duty and made expenditures as a consequence of the exercise of the privileges and franchises conferred upon it by said legislation, and has been and still is actively engaged in carrying out the purpose of its creation and fulfilling its charter obligations, and therefore the said charter exemption from assessment and from taxation is not a mere gratuity but a contract in which the necessary element of a consideration is present. 10

6. Because the judgment of the Supreme Court affirming the decision of the State Board of Equalization of Taxes is erroneous in that it is contrary to the provisions of Section 8 of "An Act to authorize the incorporation of rural cemetery associations and regulate cemeteries" of the Laws of New Jersey (Volume 1, Compiled Statutes of New Jersey, page 375). 20

7. Because the judgment of the Supreme Court affirming the decision of the State Board of Equalization of Taxes is erroneous in that it is contrary to the provisions of an act of the Legislature of New Jersey entitled "An Act for the assessment and collection of taxes," approved April 8, 1903 (Laws of 1903, page 394, Article 1, Section 3, paragraph 6). 30

Dated September 14th, 1915.

HENRY H. DAWSON,  
*Attorney of Prosecutor.*

*Endorsement.*

Endorsement :

NEW JERSEY SUPREME COURT.

10	<p>MOUNT PLEASANT CEMETERY Co.,  <i>vs.</i>          THE MAYOR AND COMMON COUN-          CIL OF CITY OF NEWARK, <i>et al.</i></p>	}	<i>On Certiorari.</i>
----	---	---	-----------------------

NOTICE OF APPEAL.

HENRY H. DAWSON,  
*Attorney of Prosecutor,*  
 716 Essex Building,  
 Newark, N. J.

20 Service of within Notice of Appeal is hereby ac-  
 knowledged as of September 14, 1915, and consent  
 given that it be filed as of September 16, 1915, in sub-  
 stitution of notice heretofore given.

(Signed) HARRY KALISCH,  
*Attorney of Defendant.*

30

40

**Writ of Certiorari.**

Filed September 19, 1914.

NEW JERSEY, ss.

The State of New Jersey to the Mayor and Common Council of the City of Newark, Richard J. Franz, Receiver of Taxes of the City of Newark, and Board of Equalization of Taxes of New Jersey. 10

GREETING :

We, being willing for certain reasons to be certified of an assessment of taxes made and levied by "The Board of Assessment and Revision of Taxes in the City of Newark," for the year nineteen hundred and thirteen against Mount Pleasant Cemetery Company of Newark, and to be certified of certain proceedings taken on appeal to the Board of Equalization of Taxes of New Jersey by said Mount Pleasant Cemetery Company of Newark, and of the opinion, decision and judgment of said Board of Equalization of Taxes of New Jersey thereon and all matters touching and appertaining thereto before said Board of Equalization of Taxes of New Jersey, do command you and each of you that the said assessment of taxes so made by the said "The Board of Assessment and Revision of Taxes in the City of Newark," and the opinion, decision and judgment of said Board of Equalization of Taxes of New Jersey and the record of the proceedings before said Board of Equalization of Taxes of New Jersey together with all things touching and concerning the same, as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature at Trenton on the seventeenth day of August next, you certify and send, together with this writ that therein may be done what of right and according to law ought to be done: 20 30

*Writ of Certiorari.*

Witness Hon. William S. Gummere, Chief Justice  
of our Supreme Court at Trenton, this twenty-seventh  
day of July, nineteen hundred and fourteen.

WM. C. GEBHARDT,  
*Clerk.*

HENRY H. DAWSON,  
*Attorney.*

10 Endorsed :

NEW JERSEY SUPREME COURT.

MOUNT PLEASANT CEMETERY CO.,

*vs.*

THE MAYOR AND COMMON COUN-  
CIL OF CITY OF NEWARK, *et al.*

*On Certiorari.*

20

WRIT OF CERTIORARI.

HENRY H. DAWSON,  
*Attorney.*  
716 Essex Building,  
Newark, N. J.

Allocatur :

WM. S. GUMMERE,  
*C. J.*

30 Service of within writ of certiorari is hereby ac-  
knowledged.

July 30, 1914.

FRANK E. BRADNER,  
*Attorney, Mayor and C. C. City of  
Newark, and Richard J. Franz,  
Receiver, &c.*

August 4, 1914.

For Board of Equalization of Taxes of New Jersey.

40

FRANK A. O'CONNOR,  
*Clerk.*

**Return.**

## NEW JERSEY SUPREME COURT.

MOUNT PLEASANT CEMETERY Co.,	}	<i>On Certiorari.</i>
<i>vs.</i>		
THE MAYOR AND COMMON COUN- CIL OF CITY OF NEWARK, <i>et al.</i>		

10

The Board of Equalization of Taxes of New Jersey doth herewith send to the Supreme Court of the State of New Jersey the petition, judgment, memorandum and proceedings in the matter of the appeal of Mount Pleasant Cemetery Company of Newark from the assessment of property located in the City of Newark, County of Essex, as within it is commanded, as by the transcript under the seal of said board hereto annexed more fully appears.

20

BOARD OF EQUALIZATION OF TAXES OF  
NEW JERSEY.

(SEAL.)

By FRANK A. O'CONNOR,

*Clerk.*

30

40

*Return.*

10 IN THE MATTER OF THE APPLICATION  
 OF MOUNT PLEASANT CEMETERY  
 COMPANY OF NEWARK FOR THE  
 REDUCTION OF THE TAX ASSESS-  
 MENT FOR THE YEAR 1913, ON  
 PROPERTY SITUATE IN THE CITY  
 OF NEWARK, COUNTY OF ESSEX  
 AND STATE OF NEW JERSEY. *Petition.*

*To the Board of Equalization of Taxes of New Jersey:*

20 Your petitioner, Mount Pleasant Cemetery Com-  
 pany of Newark residing at (P. O. address) Belleville  
 avenue, Newark, in the County of Essex and State  
 of New Jersey, respectfully shows that it is the owner  
 of certain property situate in the taxing district of  
 City of Newark, County of Essex, consisting of a  
 portion of Mount Pleasant Cemetery Company premi-  
 ses and known as Block 614, Lot 1.

30 That said property has been assessed for the pur-  
 pose of taxation for the year 1913 at a valuation of  
 Land, \$62,600; Improvement, \$.....; Personal,  
 \$.....; Total, \$62,600; at which assessment your  
 petitioner is aggrieved, because the said assessment  
 is in excess of its true value, and because said premi-  
 ses are not taxable when owned by petitioner as being  
 part of the cemetery premises.

That an appeal from said assessment has been filed  
 with the Essex County Board of Taxation, which ap-  
 peal said board disposed of as follows: Tax assess-  
 ment sustained.

Your petitioner has, therefore, not paid the taxes  
 so levied for the year 1913, and prays that the said  
 assessment of Land, \$62,600; Impt., \$.....; Pers.  
 \$.....; Total, \$62,600, for the year 1913, be re-

40

*Return.*

duced to the true value of the property, to wit; or set aside, Land, \$ Nothing; Impt., \$. . . . .; Pers., \$. . . . .; Total, \$. . . . .

Dated, February 20th, 1914.

MOUNT PLEASANT CEMETERY COMPANY OF NEWARK.

By

(Signed) JAMES S. HIGBIE,

10

(SEAL.)

*President.*

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.

James S. Higbie, President of Mount Pleasant Cemetery Company of Newark, the above named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

20

JAMES S. HIGBIE.

Sworn and subscribed before me this  
20th day of February, 1914.

MRS. H. QUINN,

*Notary Public of New Jersey.*

30

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*Return.*

STATE OF NEW JERSEY, }  
COUNTY OF } ss.

....., being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on..... (attorney or clerk) of..... (name of taxing district), personally, this.....day of .....19.....  
10 Sworn and subscribed before me this .....day of.....19..  
.....  
.....

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.

20 Fred L. Flohn, Jr., being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on James A. Mungle, Secretary of the Essex County Board of Taxation, personally, this 21st day of February, 1914.

FRED L. FLOHN, JR.

Sworn and subscribed before me this 25th day of February, 1914.

FRANK BARTLETT,  
*Master in Chancery of N. J.*

30

Service of copy of within Petition of Appeal is hereby acknowledged on behalf of the City of Newark. February 21, 1914.

FRANK E. BRADNER,  
*City Attorney.*

40

*Return.*

Endorsed :

BOARD OF EQUALIZATION OF TAXES OF NEW  
JERSEY.

PETITION OF APPEAL.

MOUNT PLEASANT CEMETERY COM-  
PANY OF NEWARK.

*vs.*

CITY OF NEWARK.

10

Filed, February 26, 1914.

HENRY H. DAWSON,

*Petitioner's Attorney,*

716 Essex Bldg.,

Newark, N. J.

20

30

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*Return.*

STATE OF NEW JERSEY.  
BOARD OF EQUALIZATION OF TAXES.

10	IN THE MATTER OF THE APPLICATION OF MOUNT PLEASANT CEMETERY COMPANY OF NEWARK FOR THE REDUCTION OF THE TAX ASSES- SMENT FOR THE YEAR 1913, ON PROPERTY SITUATE IN THE CITY OF NEWARK, COUNTY OF ESSEX AND STATE OF NEW JERSEY.	} <i>Memoran- dum.</i>  } <i>By Mr. Jess.</i>
----	---	---

For the petitioner, Henry H. Dawson.

For the respondent, Frank E. Bradner.

20 The City of Newark assessed about six acres of land owned by Mt. Pleasant Cemetery Company, for taxes for the year 1913. On appeal to the Essex County Board of Taxation the assessment was sustained, and the matter now comes before us for review.

30 The land sought to be taxed is a portion of premises conveyed to the Cemetery Company by the State of New Jersey through the Riparian Commission. It lies between the high water mark and the dock line of the Passaic River. It is not now and never has been a part of the upland. It is about 1500 feet in length by about 400 feet at its widest, and between 100 and 200 feet in width at its narrowest portion. It is separated from the original tract of the Cemetery Company by the tracks of the Erie Railroad Company. It is submerged by very high tides except as to a small part of the tract, which has been filled in. This filling in, which is necessary to make the land available for any use as such, has been going on intermittently since the land was acquired by the Cemetery Com-

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*Return.*

pany in 1881. There is no question that none of the land, except perhaps the filled in portion, could have been used for interments at the time of the assessment complained of, and it is also equally certain that the filled-in portion would not have been used for that purpose. A visit to the Cemetery and an inspection of the land in question by members of this Board disclosed physical conditions which are absolutely inconsistent with the obvious spirit and purpose of Section 3, Sub-division 6 of the General Tax Act, which exempts:

“Graveyards not exceeding ten acres of ground, cemeteries and buildings for cemetery use erected thereon.”

A cemetery is “A place or area of ground set apart for the burial of the dead.” A. & E. Enc. of Law, 2nd, Ed. Vol. 5, p. 781. The land in question has not been set apart for that purpose. It could not at the date of the assessment have been used for that purpose, without violating Section 22 of the Cemetery Act, Compiled Statutes, Vol. 1, p. 379. It is at least a question whether this land can in the future be used for that purpose without the consent of the Common Council of Newark and the Board of Health, in compliance with the requirements of Section 27 of the same act. Compiled Statutes, Vol. 1, page 380.

We do not regard the case of *Hoboken vs. North Bergen*, 14 Vr., 146, cited in the appellant’s brief, as authority for the exemption of the land here sought to be taxed. In that case the land exempted was not actually used for the purposes of burial, but was part of a cemetery tract of 17 acres, declared exempt from taxation by a special act, and might have been used for interment at the time of the assessment. What we have already said indicates clearly, we think, the conditions which differentiate this appeal from the North Bergen case.

We need not consider the appellant’s contention for exemption under the provisions of the general act

*Return.*

concerning cemeteries, since the General Tax Act of 1903 repeals all exemptions except those expressly allowed by that act, as far as the legislature had power to do so. *Hanover Township vs. Camp Meeting Association*, 68 Atl., 753.

10 This brings us to the claim of the appellant that it has an irrevocable contract with the State conferring upon its property immunity from taxation.

The Cemetery Company was incorporated by an act of the legislature approved January 24, 1844. Section 6 of that act provided: "That the premises, burial lots, vaults, monuments and other fixtures of said cemetery, shall not be subject to any assessment, taxes or fines, unless otherwise directed by the Board of Chosen Freeholders of the County of Essex": In June, 1891, the Essex County Board of Freeholders ordered by resolution that the Cemetery Company should thereafter be subject to taxes and assessments. 20 By a supplement to the Act of 1841, approved February 9, 1861, it was provided that the property, assets and effects of the company, which had accrued or might accrue or be derived from the sale of lots in the cemetery, should be exempt from taxation. This supplement did not contain the limitation found in the original act, that the freedom from taxation should continue unless otherwise ordered by the Essex County Board of Freeholders. As the land involved 30 in this appeal was purchased with proceeds of the sale of lots the appellant contends that it comes within the purview of the supplementary act above recited. It is further argued that as to this property, the express exemption is unconditional, and therefore cannot be affected by any action or order of the Essex County Board of Freeholders. While in our opinion the supplementary act becomes a part of the original statute, and must be construed with reference to all the consistent parts and provisions of that statute 40 (*Farrell vs. The State*, 54 N. J. L., 421, and *Rahway*

*Return.*

*Savings Trust vs. Rahway*, 53 N. J. L., 51), we find another insuperable objection to giving to the supplement the effect claimed for it by the petitioner. This supplement was enacted after the legislature had, in 1846, passed an act providing that the charter of every corporation thereafter granted should be subject to alteration, suspension and repeal, in the discretion of the legislature. The Constitutional Amendments of 1875, provided *inter alia*, that "property shall be assessed for taxes under general laws, and by uniform rules, according to its true value." Since that amendment was adopted there can be no exemption of property from taxation by force of special or local statutes, except in the case of irrepealable contracts. As already pointed out, the General Tax Act must be looked to as the sole legislative authority for tax exemption. We are wholly unable to construe the supplement to the appellant company's charter as a contract beyond the power of the legislature to abrogate. The special immunity from taxation granted by this supplement was in our judgment a mere gratuity, a concession without consideration, which has since been revoked.

The conclusions here reached are based upon similar reasoning and the same authorities relied upon in the case of *Seton Hall College vs. Village of South Orange*, in which the Supreme Court filed a memorandum that is given in full in the report of this Board for 1913, page 58.

The appeal is therefore dismissed and the assessment affirmed.

FRANK B. JESS,  
*President.*

*Return.*

Endorsed :

STATE OF NEW JERSEY.  
BOARD OF EQUALIZATION OF TAXES.

10 *In re*  
MT. PLEASANT CEMETERY COM-  
PANY,  
*vs.*  
CITY OF NEWARK.

MEMORANDUM.

20

30

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*Return.*

## STATE OF NEW JERSEY.

## BOARD OF EQUALIZATION OF TAXES.

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IN THE MATTER OF APPEAL OF  
MOUNT PLEASANT CEMETERY  
COMPANY FROM THE ASSESSMENT  
OF PROPERTY IN THE CITY OF NEW-  
ARK, COUNTY OF ESSEX, FOR THE  
YEAR 1913.

---

*Judgment.* 10

An appeal in writing having been filed with the Board of Equalization of Taxes, duly verified according to the rules of practice prescribed by said Board, by Mount Pleasant Cemetery Company, in which it is alleged that an injustice has been done the said complainant by the assessment of real property for taxation for the year 1913, located at the City of Newark, in the County of Essex, consisting of a portion of the cemetery lands of said appellant known as lot No. 1, in block No. 614, on the Assessment Block Maps of the City of Newark, and that said property is assessed higher than the true value thereof: 20

After hearing evidence produced on the part of said complainant, and the said respondent and the argument of Henry H. Dawson, for complainant, and Frank E. Bradner, for the respondent, and after considering the same, it is on this ninth day of June, nineteen hundred and fourteen, at the session of the Board of Equalization of Taxes, ordered, adjudged and decreed, under and by virtue of Chapter 67 of the Laws of 1905, that the assessment of sixty-two thousand, six hundred (\$62,600) dollars heretofore levied upon said property be and the same is hereby affirmed and the appeal from said assessment dismissed. 30

40

*Return.*

And it is further ordered, that this order be certified to the Collector or Receiver of Taxes of the City of Newark, County of Essex.

FRANK B. JESS, *President.*  
B. H. MINCH,  
ALFRED T. HOLLEY,  
L. T. RUSSELL,  
GEO. T. BOUTON.

10 Attest:

FRANK A. O'CONNOR,  
*Clerk.*

Endorsed:

STATE OF NEW JERSEY.  
BOARD OF EQUALIZATION OF TAXES.

20 *In re* APPEAL OF MOUNT PLEASANT  
CEMETERY COMPANY,  
*vs.*  
THE MAYOR AND COMMON COUNCIL  
OF THE CITY OF NEWARK.

County of Essex, for the year 1913.

JUDGMENT.

30 Decided and Filed, June 9, 1914.

FRANK A. O'CONNOR,  
*Clerk of Board of Equalization of Taxes.*

MINUTES.

STATE HOUSE, TRENTON, NEW JERSEY.

Tuesday, February 24, 1914.

The Board met at 10.30 A. M.

Present—President Jess, Mr. Minch, Mr. Holley  
and Mr. Bouton.

40 \* \* \* \* \*

Return.

The following dates were fixed for hearing appeals:

\* \* \* \* \*

City Hall, Newark, Wednesday, March 18, 1914.

\* \* \* \* \*

CITY HALL, NEWARK, NEW JERSEY.

Wednesday, March 18, 1914.

The Board met at 10.30 A. M., for the purpose of hearing appeals.

10

Present—President Jess, Mr. Minch, Mr. Holley, Mr. Russell, and Mr. Bouton.

The following calendar of appeals was called:

\* \* \* \* \*

7. *Mount Pleasant Cemetery Company vs. City of Newark.* Case heard, Mr. Henry H. Dawson appearing for the petitioner and Mr. Frank E. Bradner for the City of Newark. The Board heard the testimony of Charles H. Burton, James S. Higbie, and John P. Coutrell for the petitioner, and reserved decision, 20  
briefs to be filed by March thirty-first.

\* \* \* \* \*

STATE HOUSE, TRENTON, NEW JERSEY.

Tuesday, April 7, 1914.

The Board met at 10.30 A. M.

Present—President Jess, Mr. Holley, Mr. Russell, and Mr. Bouton.

\* \* \* \* \*

In the matter of the appeal of *Mount Pleasant Cemetery Company vs. City of Newark*, it was decided to call for supplemental briefs from counsel, relative to the use of the property in question under the cemetery act of 1896 (P. L. 1896, p. 46). 30

\* \* \* \* \*

STATE HOUSE, TRENTON, NEW JERSEY.

Tuesday, April 14, 1914.

The Board met at 10:30 A. M.

Present—President Jess, Mr. Minch, Mr. Holley, Mr. Russell, and Mr. Bouton.

\* \* \* \* \*

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*Return.*

In the matter of the appeal of *Mt. Pleasant Cemetery Company vs. City of Newark*, Mr. Russell and Mr. Bouton were appointed a committee to view the property and report back.

\* \* \* \* \*

STATE HOUSE, TRENTON, NEW JERSEY.

Tuesday, June 9, 1914.

10 The Board met at 10:30 A. M.

Present—President Jess, Mr. Minch, Mr. Holley, Mr. Russell and Mr. Bouton.

\* \* \* \* \*

President Jess submitted a memorandum in the matter of *Mount Pleasant Cemetery Company vs. City of Newark*. The memorandum was adopted and judgment entered, ordering that the assessment of \$62,600, levied for the year 1913 on Block 614, Lot 1, be affirmed and the appeal therefrom dismissed.

20

\* \* \* \* \*

30

40

*Return.***Docket.**

5701

---

MT. PLEASANT CEMETERY COMPANY,  
*Petitioner,*

*vs.*

CITY OF NEWARK, COUNTY OF ES-  
SEX,

*Respondent.*

10

1914.

Petitioner's attorney, Henry H. Dawson.

Respondent's attorney, Frank E. Bradner.

Assessment of 1913.

Property: A portion of the Mt. Pleasant Cemetery  
premises, Block 614, Lot 1, claimed to be exempt. 20

Amount, \$62,600. Judgment, \$....

February 26. Petition filed.

February 26. Hearing fixed for March 18 at New-  
ark and notice sent.

March 18. Case heard; decision reserved pending  
filing of briefs.

April 7. Supplemental briefs called for.

April 14. Messrs. Russell and Bouton appointed to  
view the property and report.

June 9. Memorandum and judgment dismissing 30  
petition entered.

40

*Return.*

STATE OF NEW JERSEY.  
BOARD OF EQUALIZATION OF TAXES OF  
NEW JERSEY.

I, Frank A. O'Connor, Clerk of the Board of Equal-  
ization of Taxes of New Jersey, do hereby certify that  
the foregoing are true copies of the petition, judg-  
10 ment, memorandum and proceedings in the matter  
of the appeal of Mount Pleasant Cemetery Company  
of Newark from the assessment of property located  
in the City of Newark, County of Essex, for the year  
1913, as the same are taken from and compared with  
the originals, filed in the office of the Board of Equal-  
ization of Taxes of New Jersey, on the twenty-sixth  
day of February and other dates, A. D. 1914, and now  
remaining on file and of record therein.

In testimony whereof, I have hereunto set my hand  
20 and affixed the official seal of the Board, at Trenton,  
this eleventh day of August, A. D. 1914.

(SEAL.)

FRANK A. O'CONNOR,

*Clerk.*

30

40

**Reasons.**

Filed August 18, 1914.

## NEW JERSEY SUPREME COURT.

MOUNT PLEASANT CEMETERY CO., <i>Prosecutor,</i> <i>vs.</i> MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, <i>et al.</i> , <i>Defendants.</i>	}	<i>On Certiorari.</i> 10 <i>Reasons.</i>
--	---	---

The said prosecutor by Henry H. Dawson, its attorney, comes and prays that the assessment of taxes for the year nineteen hundred and thirteen made against it by The Board of Assessment and Revision of Taxes in the City of Newark may be set aside and reversed and for nothing holden; and that the decision and judgment of the Board of Equalization of Taxes of New Jersey dismissing the appeal of the said prosecutor and affirming the said assessment of taxes be reversed and set aside for the following reasons:

1. The prosecutor, a corporation, obtained an irrepealable exemption from taxation by virtue of the provisions of its charter granted to it by an Act of the Legislature of New Jersey approved January twenty-fourth, eighteen hundred and forty-four (laws of eighteen hundred and forty-four, page nineteen), and by virtue of the provisions of a supplement thereto approved February ninth, eighteen hundred and sixty-one (laws of eighteen hundred and sixty-one, page twenty-eight).

*Reasons.*

2. That the prosecutor, accepting its said charter and supplement, has always acted in accordance therewith, and in consideration of said charter and supplement has from time to time purchased real property in the City of Newark for the purpose of a cemetery, sold burial lots therein, some of which have interments therein, and have held and used and still hold and use all its said real estate for cemetery purposes only.

3. That the land and real estate sought to be so assessed for taxation for the year nineteen hundred and thirteen is a portion of the real estate purchased by the prosecutor by virtue of the authority given it in and by the provisions of the supplement of eighteen hundred and sixty-one to the original charter and is exempt from taxation by virtue thereof.

4. That the exemptions from taxation contained in the original charter of prosecutor and the supplement thereto of eighteen hundred and sixty-one are not to be considered as gratuities but are contracts in which the element of consideration enters, the prosecutor having made expenditures and incurred obligations in the exercise of the powers conferred upon it by the Legislature of this State. That by reason thereof the taxation exemptions conferred upon the prosecutor are irrevocable.

5. That the lands of the prosecutor are exempt from taxation by virtue of the provisions of the General Act concerning cemeteries of this State, Section eight (Vol. 1 Compiled Statutes of New Jersey, page three hundred seventy-five).

6. That the lands of the prosecutor are exempt from taxation by virtue of the provisions of the General Tax Act of nineteen hundred and three of this State, Section three, paragraph six (Vol. 4 Compiled

*Reasons.*

Statutes of New Jersey, page five thousand eighty-four).

7. The said assessment of taxes made by the said Board of Assessment and Revision of Taxes in the City of Newark and the said decision and judgment of the Board of Equalization of Taxes of New Jersey are in divers other respects illegal, unjust, erroneous and oppressive and should be set aside and be for nothing holden. 10

HENRY H. DAWSON,  
*Attorney of Prosecutor.*

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**Agreed State of Facts.**

## NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">MOUNT PLEASANT CEMETERY CO., <i>vs.</i> THE MAYOR AND COMMON COUN- CIL OF CITY OF NEWARK, <i>et al.</i></p>	}	<i>On Certiorari.</i>
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The following state of facts are agreed upon :

20 1. The plaintiff was incorporated by an Act of the Legislature of the State of New Jersey approved January 24th, 1844, Laws of 1844, page 19, and section 6 of its charter as found in the laws of 1844 provides "That the premises, burial lots, monuments and other erections and fixtures of said cemetery shall not be subject to any assessments, taxes or fines unless otherwise ordered by the Board of Chosen Freeholders of the County of Essex, or liable to be seized upon, distrained, sold or otherwise subject to any process of law, or assessments under any insolvent law whatever, except for encumbrances existing at or previous to the passage of this act."

30 2. A supplement to this Charter of 1844 was enacted by the Legislature and approved February 9th, 1861, laws of 1861, page 28, section 1 of this supplement reads: "That the property, assets and effects of the said Cemetery Company which have accrued, or may accrue or be derived, from the sale of lots in said cemetery, are hereby exempted from all taxes and assessments, and that the said surplus proceeds shall be held and used for the purposes above mentioned."

40 3. The plaintiff acquired title to its property by the following deeds among others :

*Agreed State of Facts.*

- C. 6 84 Isaac Baldwin, May 25, 1844.  
 M. 6 569 William Rankin, October 1, 1846.  
 V. 6 429 Elias E. Boudinot, May 1, 1848.  
 V. 6 60 Martin Rowen, April 28, 1848.  
 C. 17 134 Susan F. Sanchez, March 26, 1873.  
 C. 18 582 Charlotte S. Rutherford, April 26, 1875.  
 C. 21 445 State of New Jersey, June 11, 1881.

The deed from the State of New Jersey, by Riparian Commissioners of 1881 covers the premises sought now to be taxed. The other deeds conveyed the upland. 10

4. The land which the city claims as liable for taxation lies to the east of the Erie Railroad tracks and extends to the dock line of the Passaic River. It is directly contiguous to the main portion of the cemetery which extends out to Belleville avenue. It is about fifteen hundred (1,500) feet long along the river by three hundred and thirty-eight (338) feet wide at its northern end, and one hundred and seven (107) feet wide at its southern end. The only possible means of access to it from the land is either by going through the other property of the Cemetery Company, and crossing the Erie Railroad tracks, or by going over land of other property owners to the south or by entering from Herbert Place which bounds the property on the north, which, while a public street, has not up to the present time been either graded, paved, curbed or flagged. At the present time there is no passageway open into this strip from the other land of the Cemetery Company, nor crossing over the Erie Railroad tracks except at Herbert Place. The land is between a point east of the old high water line of the Passaic River and the dock line. 20 30

5. The land originally was covered with water at high tide, excepting possibly a small portion at the north end, formerly known as Green Island. The Cemetery Company since the riparian deed in 1881, 40

*Agreed State of Facts.*

has been slowly filling in this property and up to the present has filled in a space about three hundred (300) feet wide at the north end, extending south about one hundred and thirty (130) feet. This part is being prepared for interments, though it has not been divided into lots, nor have any lots been sold there, nor have there been any burials there. The rest of the tract, though partly filled, has not been filled in to within three feet of the proper grade, and during high tide is more or less covered with water, interments could not be made there at the present time.

6. The land sought to be taxed was acquired by means of funds derived from the sale of burial lots in the other part of the cemetery. None of the endowment funds were used in its purchase.

7. Taxes have been levied by the city on this tract at different times, but have not been paid by the cemetery.

8. The total acreage of the cemetery property after this purchase in 1881 was forty and sixty-three one-hundredths acres, from which should be deducted the strip occupied by the tracks of the Erie Railroad.

9. A picket fence erected by the Cemetery Company extends along the west side of the Erie Railroad tracks from the south line of the cemetery property to a point about one hundred and fifty feet from its north line.

10. Many interments have been made in that part of the cemetery west of the fence and numerous monuments and gravestones erected there.

11. In June, 1891, the Essex County Board of Freeholders ordered by resolution that the Cemetery Company should be thereafter subject to taxes.

HENRY H. DAWSON,  
*Attorney for Prosecutor.*

HARRY KALISCH,  
*Attorney for Defendants.*

*Opinion—Per Curiam.*

**Opinion.**

NEW JERSEY SUPREME COURT.

June Term, 1915.

<p>MOUNT PLEASANT CEMETERY COMPANY OF NEWARK,</p> <p style="text-align: right;"><i>Prosecutor,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, <i>et al.</i>,</p> <p style="text-align: right;"><i>Defendants.</i></p>	}	<p><i>On Certiorari.</i></p>	<p>10</p>
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Argued June 2, 1915. Decided July 12, 1915.

Henry H. Dawson, Esq., for prosecutor.

Harry Kalisch, Esq., for City of Newark.

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Before Justices Garrison, Trenchard and Black.

*Per Curiam:*

On *certiorari*, which brings up for review a judgment of the State Board of Equalization of Taxes, affirming an assessment of taxes for the year 1913 against the Mount Pleasant Cemetery Company of Newark, in which the following memorandum was filed by the President of the Board, Mr. Frank B. Jess:

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"The City of Newark assessed about six acres of land owned by Mt. Pleasant Cemetery Company, for taxes for the year 1913. On appeal to the Essex County Board of Taxation the assessment was sustained, and the matter now comes before us for review.

"The land sought to be taxed is a portion of premises conveyed to the Cemetery Company by the State of New Jersey through the Riparian Commission. It lies between the high water mark and the dock line of the Passaic River. It is not now and never has been

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*Opinion—Per Curiam.*

a part of the upland. It is about 1,500 feet in length by about 400 feet at its widest, and between 100 and 200 feet in width at its narrowest portion. It is separated from the original tract of the Cemetery Company by the tracks of the Erie Railroad Company. It is submerged by very high tides except as to a small part of the tract, which has been filled in. This filling in, which is necessary to make the land available for any use as such, has been going on intermittently since the land was acquired by the Cemetery Company in 1881. There is no question that none of the land, except perhaps the filled-in portion, could have been used for interments at the time of the assessment complained of, and it is also equally certain that the filled-in portion would not have been used for that purpose. A visit to the cemetery and an inspection of the land in question by members of this board disclosed physical conditions which are absolutely inconsistent with the obvious spirit and purpose of Section 3, Sub-division 6 of the General Tax Act, which exempts:

“Graveyards not exceeding ten acres of ground, cemeteries and buildings for cemetery use erected thereon.”

A cemetery is “a place or area of ground set apart for the burial of the dead.” A. & E. Enc. of Law, 2nd Ed., Vol. 5, p. 781. The land in question has not been set apart for that purpose. It could not at the date of the assessment have been used for that purpose, without violating Section 22 of the Cemetery Act, Compiled Statutes, Vol. 1, p. 379. It is at least a question whether this land can in the future be used for that purpose without the consent of the Common Council of Newark and the Board of Health, in compliance with the requirements of Section 27 of the same act. Compiled Statutes, Vol. 1, p. 380.

We do not regard the case of *Hoboken vs. North Bergen*, 14 Vr., 146, cited in the appellant's brief, as

*Opinion—Per Curiam.*

authority for the exemption of the land here sought to be taxed. In that case the land exempted was not actually used for the purposes of burial, but was part of a cemetery tract of seventeen acres, declared exempt from taxation by a special act, and might have been used for interment at the time of the assessment. What we have already said indicates clearly, we think, the conditions which differentiate this appeal from the North Bergen case. 10

We need not consider the appellant's contention for exemption under the provisions of the general act concerning cemeteries, since the General Tax Act of 1903 repeals all exemptions except those expressly allowed by that act, as far as the legislature had power to do so. *Hanover Township vs. Camp Meeting Association*, 68 Atl., 753.

This brings us to the claim of the appellant that it has an irrevocable contract with the State conferring upon its property immunity from taxation. 20

The Cemetery Company was incorporated by an act of the legislature approved January 24, 1844. Section 6 of that act provided: "That the premises, burial lots, vaults, monuments and other fixtures of said cemetery, shall not be subject to any assessment, taxes or fines, unless otherwise directed by the Board of Chosen Freeholders of the County of Essex." In June, 1891, the Essex County Board of Freeholders ordered by resolution that the Cemetery Company should thereafter be subject to taxes and assessments. 30  
By a supplement to the Act of 1841, approved February 9, 1861, it was provided that the property, assets and effects of the company, which had accrued or might accrue or be derived from the sale of lots in the cemetery, should be exempt from taxation. This supplement did not contain the limitation found in the original act, that the freedom from taxation should continue unless otherwise ordered by the Essex County Board of Freeholders. As the land involved 40

*Opinion—Per Curiam.*

in this appeal was purchased with proceeds of the sale of lots the appellant contends that it comes within the purview of the supplementary act above recited. It is further argued that as to this property, the express exemption is unconditional, and therefore cannot be effected by any action or order of the Essex County Board of Freeholders. While in our opinion the supplementary act becomes a part of the original statute, and must be construed with reference to all the consistent parts and provisions of that statute (*Farrell vs. The State*, 54 N. J. L., 421, and *Rahway Savings Trust vs. Rahway*, 53 N. J. L., 51), we find another insuperable objection to giving to the supplement the effect claimed for it by the petitioner. This supplement was enacted after the legislature had, in 1846, passed an act providing that the charter of every corporation thereafter granted should be subject to alteration, suspension and repeal, in the discretion of the legislature. The Constitutional Amendments of 1875, provided *inter alia*, that "property shall be assessed for taxes under general laws, and by uniform rules, according to its true value." Since that amendment was adopted there can be no exemption of property from taxation by force of special or local statutes, except in the case of irrevocable contracts. As already pointed out, the General Tax Act must be looked to as the sole legislative authority for tax exemption. We are wholly unable to construe the supplement to the appellant company's charter, as a contract beyond the power of the legislature, to abrogate. The special immunity from taxation granted by this supplement was in our judgment a mere gratuity, a concession without consideration, which has since been revoked.

The conclusions here reached are based upon similar reasoning and the same authorities relied upon in the case of *Seton Hall College vs. Village of South Orange*, in which the Supreme Court filed a memorandum that is given in full in the report of this board for 1913, page 58.

*Opinion—Per Curiam.*

The appeal is therefore dismissed and the assessment affirmed."

The judgment of the State Board of Equalization of Taxes is affirmed for the reasons set forth in the above memorandum filed by Mr. Jess.

Endorsement:

NEW JERSEY SUPREME COURT. 10

June Term, 1915..

MOUNT PLEASANT CEMETERY COM-  
PANY OF NEWARK,

*Prosecutor,*

*vs.*

THE MAYOR AND COMMON COUNCIL  
OF THE CITY OF NEWARK, *et als.,*

*Defendants.*

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OPINION.

*Per Curiam.*

Filed July 13, 1915.

WM. C. GEBHARDT,

*Clerk.*

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**Rule for Judgment.**

## NEW JERSEY SUPREME COURT.

	MOUNT PLEASANT CEMETERY COM- PANY OF NEWARK,	}	On Certiorari.
	<i>Prosecutor,</i>		
10	<i>vs.</i>		
	THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, <i>et al.</i> ,	}	
	<i>Defendants.</i>		

20 The court having inspected the transcript and proceedings returned with the *certiorari* in this cause, and the reasons for reversing the judgment of the Board of Equalization of Taxes, and heard the argument of counsel therein, and having duly considered the same;

It is, on this twenty-ninth day of July, 1915, ORDERED, that the judgment of the Board of Equalization of Taxes of the State of New Jersey be in all things affirmed with costs.

Entered July 29, 1915.

On motion of

HARRY KALISCH, ESQ.,  
*Attorney of Defendant.*

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*Rule for Judgment.*

Endorsement :

## NEW JERSEY SUPREME COURT.

MOUNT PLEASANT CEMETERY COM- PANY OF NEWARK,  <i>Prosecutor,</i>  <i>vs.</i> THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, <i>et al.</i> ,  <i>Defendants.</i>	}	<i>On          Certiorari.</i>	10
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## RULE FOR JUDGMENT.

HARRY KALISCH, <i>Attorney of Defendant,</i> 920 Broad St., Newark, N. J.	20
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