

## Court of Errors and Appeals

MAUSOLEUM BUILDERS OF NEW  
JERSEY, a body corporate,

*Appellant,*

*vs.*

THE STATE BOARD OF TAXES AND  
ASSESSMENTS, successor to Board  
of Equalization of Taxes of New  
Jersey, and BOROUGH OF TOTOWA,

*respondents*  
*Appellees.*

*On*

*Certiorari.*

*On*

*Appeal.*

### *Respondent* Brief of ~~Appellee~~ the Borough of Totowa.

The writ in this case brings up for review the judgment of the Supreme Court of New Jersey, affirming an assessment made by the taxing authorities of the Borough of Totowa upon a building of the appellant lying in the Borough of Totowa and erected in a cemetery owned and conducted by another corporation known as the Laurel Grove Cemetery Company.

The building in question was erected by the appellant as a place of sepulchre. The appellant is a corporation organized under the ~~Laws of the~~ General Corporation Act of New Jersey, and its objects as stated in its Certificate of Incorporation are many and varied, but include the building of mausoleums.

The appellant claims that the building is exempt from taxation under a clause of the charter of the Laurel Grove Cemetery Company which was incorporated by a special act of the Legislature of this State, March 22nd, 1872.

It also claims exemption from taxation on the ground that the building is exempt under the General Tax Act of this State of 1903 in that it falls under the designation of a building for cemetery use within the meaning of Section 3, Sub-division 6, of said act.

## I.

THE TAX EXEMPTION CONTAINED IN THE CHARTER OF THE LAUREL GROVE CEMETERY COMPANY IS NO LONGER IN EFFECT, HAVING BEEN REPEALED AND ANNULLED.

The charter of the Laurel Grove Cemetery Company passed in 1872, contained an exemption from taxation, but it was subject to the reservation of the public law of 1846, page 16, which enacted that the charter of every corporation which should thereafter be granted should be subject to alteration, suspension and repeal in the discretion of the Legislature.

*Little vs. Bowers*, 17 Vr., p. 300.

It is settled that under the amendatory provision of the constitution adopted in 1875, requiring property to be assessed for taxes under general laws and by uniform rules according to its true value, "there can be no exemption of property from taxation by force of special or local statutes, except, of course, in case of some contract which the amendment of the organic law could not reach."

*Sisters of Charity vs. Chatham*, 23 Vr., p. 373.

It appears that no attempt was made by the Laurel Grove Cemetery Company to establish a cemetery under their charter until the year 1887 when they purchased the property on which the cemetery in part is located. (See Case, page 27.)

"It is entirely clear that the mere enactment of a corporate charter does not in and of itself alone amount to the making of a contract within the meaning of the Federal Constitution. In order to constitute a contract binding upon the State there must be acceptance by the parties of the other part, accompanied by the passing of a consideration substantially in accordance with the terms of the charter. Doubtless such acceptance might follow within a reasonable time after the enactment, unless by the terms of the charter a limit of time were specified. But it seems

too plain for argument that, until accepted, the charter remains subject to repeal, either by act of the Legislature or by act of the people in the form of a constitutional amendment."

*Cooper Hospital vs. Camden*, 39 Vr., p. 691.

The provisions of the constitution adopted in 1875 provided that "property shall be assessed for taxes under general laws and by uniform rules, according to its true value."

Article IV, Section 7, Par. 12, Constitution as amended.

"The general purpose of these amendments is sufficiently clear. The last one mentioned, whether considered alone or together with the context, has the effect of abrogating any special law for the assessment of taxes and any special immunity from taxation theretofore granted and not already accepted in such manner as to constitute a contract."

*Cooper Hospital vs. Camden*, *ib.*

## II.

### THE BUILDING OF THE PROSECUTOR IS NOT EXEMPT UNDER THE GENERAL TAX LAW OF 1903.

The Tax Act of 1903 expressly exempts "graveyards not exceeding ten acres of ground, cemeteries and buildings for cemetery use erected thereon."

Section 3, Sub-division 6, General Tax Act of 1903.

"All exemptions from general taxation are to be construed strictly, the resolution in case of doubt being in favor of the rule which subjects all property to a just share of the public burdens."

*Rosedale Cemetery Association vs. Linden*, 44 Vr., p. 421.

"Tax exemptions are not favored and must be given the most rigid admissible construction."

*Cooper Hospital vs. Camden*, 44 Vr., p. 478.

When the Legislature exempted buildings for cemetery use they could not have had in mind such a structure as that of the prosecutor, for such buildings were not at that time in existence in New Jersey or contemplated. It is true that from time immemorial mausoleums have been used as places of sepulchre for individuals or families, but never before in this State has the erection and maintenance of such buildings and the sale of space therein been made a matter of commercial enterprise conducted by a private business corporation.

The only possible ground on which this exemption could be sought is the fact that the building is erected in a cemetery. If it were erected on land outside of a cemetery no claim for its exemption could seriously be urged.

The exemption of "cemeteries and buildings for cemetery use erected thereon" includes the land and permanent improvements thereon which form a part of the realty and are intended for the use and enjoyment of the land as a cemetery.

That it was not the legislative intent to exempt such buildings in the Act of 1903 is clearly indicated by the attempt to make such exemption in Paragraph 6 of Chapter 233, Public Laws, 1916.

I submit that if it is not entirely clear that the building in question is taxable, it is at least evident that there is a doubt as to whether the building is exempt from taxation and, under the rule of construction laid down by the courts of this State in the *Rosedale Cemetery Association vs. Linden*, quoted above, that the doubt must be resolved in favor of the taxing authorities.

For the reasons above set forth, the judgment of the Supreme Court, affirming the assessment, should be affirmed.

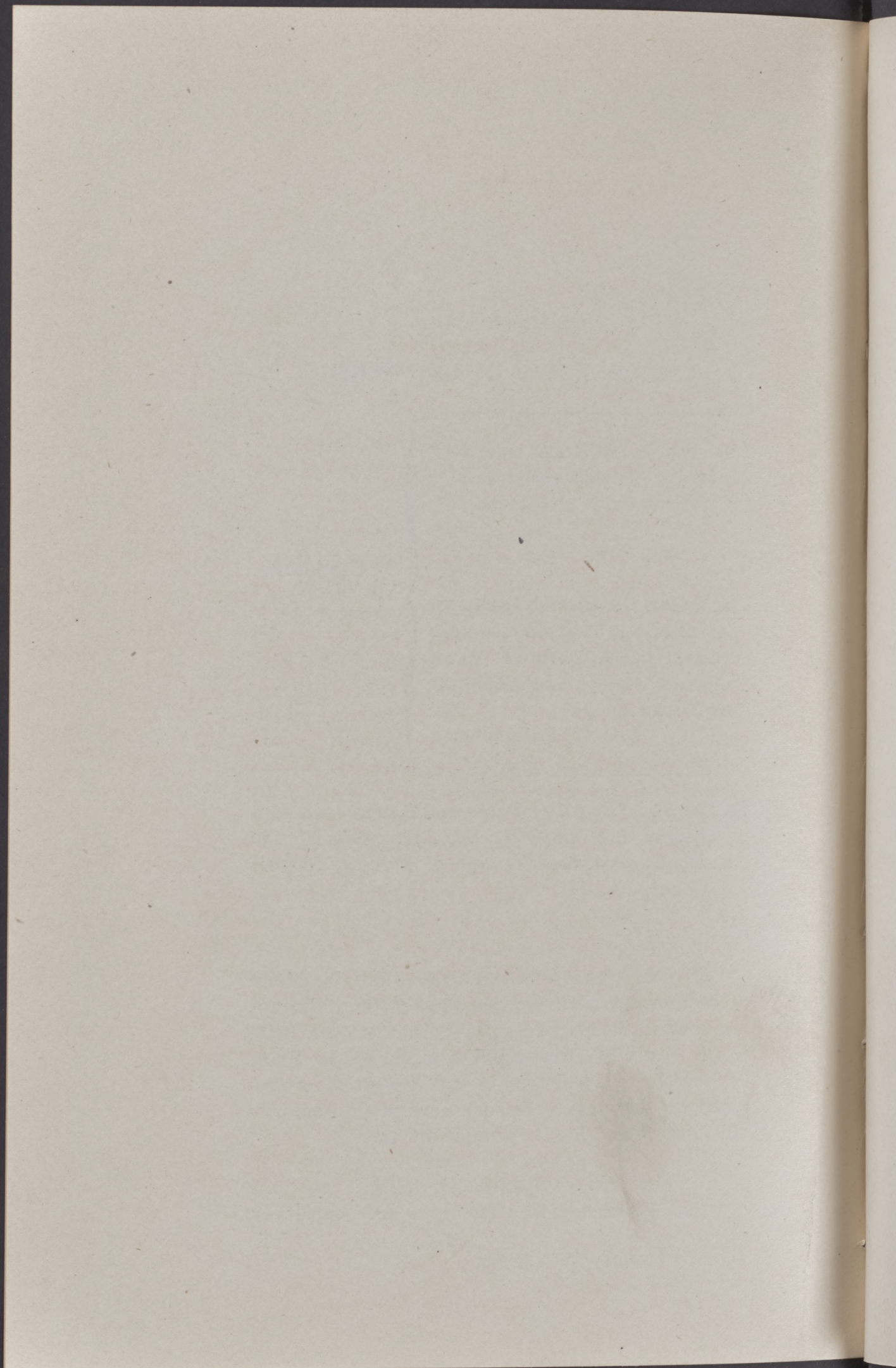
Respectfully submitted,

DANIEL L. CAMPBELL,

*Attorney for and of Counsel  
with the Borough of Totowa.*

## INDEX.

	PAGE
Notice of Appeal.....	i
Writ of Certiorari.....	1
Return to Writ.....	3
Exhibits Annexed to Return.....	4
Petition of Appeal to Board.....	6
Memorandum .....	7
Judgment of Board.....	10
Minutes of Board.....	12
Reasons .....	16
Stipulation .....	19
Proceedings before Board.....	20
Affidavit .....	33
Certification .....	34
Opinion of Supreme Court.....	35
Rule Affirming Assessment.....	39
Grounds for Appeal.....	40



## Writ of Certiorari.

NEW JERSEY, SS. :

10

*The State of New Jersey to The State Board of  
Taxes and Assessment, successor to Board  
(Seal) of Equalization of Taxes of New Jersey.  
Greeting:*

We being willing, for certain reasons, appearing by the affidavit of William J. McFarlan filed in this cause, to be certified of a certain decision or judgment made and rendered on June 29th, 1915, by the Board of Equalization of Taxes of New Jersey, of which you are the successor, on an appeal brought before said Board from a decision rendered by the Passaic County Board of Taxation, in a certain matter wherein the Mausoleum Builders of New Jersey, a body corporate, made application for the cancellation of the tax assessment for the year 1914, on property situate in the Borough of Totowa, in the County of Passaic and State of New Jersey, do hereby command you that you send under your seal to our Justices of our Supreme Court of Judicature, at Trenton, on the ninth day of September, 1915, as well the judgment aforesaid as the decision or judgment of the said Passaic County Board of Taxation, together with the proofs, depositions, petition, also the facts submitted to you and the grounds and reasons upon which your judgment was based, and all things touching and concerning the same, as fully and entirely as before you they remain, together with this, Our Writ, that therein may be done what of right and according to the laws of this State should be done.

20

30

40

*Writ of Certiorari.*

Witness W. S. GUMMERE, Esq., Chief Justice of our Supreme Court, at Trenton, the twenty-third day of August, 1915.

MICHAEL DUNN,  
Attorney.

10

WM. C. GEBHARDT,  
Clerk.

---

NEW JERSEY SUPREME COURT.

Mausoleum Builders of New Jersey, a body corporate, Prosecutor,

vs.

20

The State Board of Taxes and Assessment, successor to Board of Equalization of Taxes of New Jersey, and Borough of Totowa, Defendants.

---

Writ of Certiorari.

---

30

Returnable September 9, 1915.

MICHAEL DUNN,  
Attorney,  
Romaine Bldg.,  
Paterson, N. J.

This writ is allowed. Let it be sealed.

August 23, 1915.

40

JAMES F. MINTURN,  
*Justice of Supreme Court.*

**Return Annexed to Writ.**

Filed September 9, 1915.

## NEW JERSEY SUPREME COURT.

MAUSOLEUM BUILDERS OF NEW JERSEY, a body corporate, Prosecutor,	}	10
vs.		
THE STATE BOARD OF TAXES AND ASSESSMENT, successor to Board of Equalization of Taxes of New Jersey, and BOROUGH OF TOTOWA, Defendants.	} On Certiorari.	20

The State Board of Taxes and Assessment, established under the provisions of Chapter 244 of the Laws of 1915, doth herewith send to the Supreme Court of the State of New Jersey the petition, judgment, memorandum and proceedings before the former Board of Equalization of Taxes of New Jersey, in the matter of the appeal of Mausoleum Builders of New Jersey from the assessment of property located in the Borough of Totowa, County of Passaic, as within it is commanded, as by the transcript under the seal of said Board hereto annexed more fully appears. 30

STATE BOARD OF TAXES AND ASSESSMENT,

(Seal)

 BY IRVINE E. MAGUIRE,  
 Secretary. 40

**Exhibits Annexed to Return.**


---

 IN THE MATTER

OF

10 The Application of MAUSOLEUM BUILDERS OF NEW JERSEY, for the cancellation of the tax assessment for the year 1914 on property situate in the Borough of Totowa, County of Passaic and State of New Jersey.

 } Petition.
 

---

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

30 Your petitioner, Mausoleum Builders of New Jersey (a corporation), residing at (P. O. address) 104 Colt Building, Paterson, in the County of Passaic and State of New Jersey, respectfully shows that it is the owner of certain property situate in the taxing district of Borough of Totowa, County of Passaic, consisting of a building known as a mausoleum erected on the lands located in the Laurel Grove Cemetery plot, 100 feet by 150 feet. Said land is purchased under an agreement for instalment payments, and is held and used subject to charter rules and regulations of Laurel Grove Cemetery Company, and when building is completed the same is to be maintained and operated under an agreement to be made in keeping with these conditions, and that the land and building shall only be used as a place of sepulture for the dead.

40 That said property has been assessed for the purpose of taxation for the year 1914 at a valuation of: Land, \$500.00; improvement, \$35,000.00; per-

*Exhibits Annexed to Return.*

sonal, \$.....; total, \$35,500.00, at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value.

That an appeal from said assessment has been filed with the Passaic County Board of Taxation, which appeal said Board disposed of as follows:

10

The assessment of the land was cancelled.

The assessment on the building was affirmed.

Your petitioner has, therefore, not paid the taxes so levied for the year 1914, and prays that the said assessment of Land, \$.....; Imp., \$35,000.00; Pers., \$.....; Total, \$35,000.00, for the year 1914, be cancelled.

Dated, March 1, 1915.

(Signed) MAUSOLEUM BUILDERS OF NEW JERSEY.  
MICHAEL DUNN,  
Atty.

20

STATE OF NEW JERSEY, }  
COUNTY OF PASSAIC, } ss.:

FRANCIS C. VAN DYK, President of Mausoleum Builders of New Jersey (Inc.), 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.

30

FRANCIS C. VAN DYK.

Sworn and subscribed before me  
this 9th day of March, 1915.

MICHAEL J. MURPHY,  
Master in Chancery of N. J.

40

*Exhibits Annexed to Return.*

STATE OF NEW JERSEY, }  
 COUNTY OF PASSAIC, } ss. :

10 FREDERIC C. BARNES, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on Daniel Campbell (attorney), of Borough of Totowa (name of taxing district), personally, this 9th day of March, 1915.

FREDERIC C. BARNES.

Sworn and subscribed before me  
 this 10th day of March, 1915.

MICHAEL J. MURPHY,  
 Master in Chancery of N. J.

20 STATE OF NEW JERSEY, }  
 COUNTY OF PASSAIC, } ss. :

FREDERIC C. BARNES, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on Bernard Stafford (Secretary), of the Passaic County Board of Taxation, personally, this 10th day of March, 1915.

FREDERIC C. BARNES.

Sworn and subscribed before me  
 this 10th day of March, 1915.

30 MICHAEL J. MURPHY,  
 Master in Chancery of N. J.

(Endorsed.)

Board of Equalization of Taxes of New Jersey.

Petition of Appeal.

Mausoleum Builders of New Jersey vs. Borough of Totowa, County of Passaic.

Filed, March 11, 1915.

40

MICHAEL DUNN,  
 Petitioner's Attorney,  
 Romaine Bldg.,  
 Paterson.

*Exhibits Annexed to Return.*

## STATE OF NEW JERSEY,

## BOARD OF EQUALIZATION OF TAXES.

IN THE MATTER

10

OF

The Application of MAUSOLEUM BUILDERS OF NEW JERSEY, for the cancellation of the Tax Assessment for the year 1914 on property situate in the Borough of Totowa, County of Passaic and State of New Jersey.

Memorandum.  
By Mr. Jess.

20

For the petitioner, MICHAEL DUNN.

For the respondent, DANIEL CAMPBELL.

This is an appeal from the action of the Passaic County Board of Taxation in affirming an assessment of \$35,000 upon a building known as a mausoleum, erected upon a plot 100 feet by 150 feet, in Laurel Grove Cemetery in the Borough of Totowa. The petitioner asks that the assessment be cancelled, on the ground that the property is exempt under 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."

30

The building in question was erected by the Mausoleum Builders of New Jersey as a place of sepulture for the dead. The Mausoleum Builders of New Jersey is a corporation organized under the General Corporation Act of New Jersey. Its objects, as stated in its certificate of incorporation, are to build mausoleums, to manufacture and deal in

40

*Exhibits Annexed to Return.*

every kind of material, to acquire, hold and dispose of stocks and bonds, to acquire, hold, lease and convey real and personal property in New Jersey or elsewhere and to purchase, own, charter and operate steamboats, steam tugs, barges and other boats. The certificate also provides that the corporation shall have all the broad general powers which the draughtsmen of corporation charters are in the habit of prescribing in the certificate of incorporation. The authorized capital stock is \$400,000, divided into 4,000 shares of a par value of \$100 each.

The Laurel Grove Cemetery Company agreed to sell to the Mausoleum Builders a plot of land in the cemetery, 100x150 feet, as a site for a mausoleum. The purchase price of \$10,000 was to be paid in instalments of \$1,000 each. Only the first instalment has been paid. The resolution authorizing the sale of the land provided that the plans and specifications of the mausoleum should be approved by the directors of the cemetery, and that the mausoleum should be maintained after its completion under the terms and conditions of an agreement to be thereafter made between the parties. The land was sold subject to the requirements and regulations that govern the cemetery. The building erected upon this land contains about 400 crypts. These crypts are sold to such persons as may desire to buy them as a perpetual resting place for the dead. Eleven crypts had been sold up to the time of the assessment under review.

The sole question to be decided is whether this mausoleum is a building for cemetery use within the meaning of section 3, subdivision 6 of the General Tax Act of 1903, above quoted. The local assessor decided that it was not. In that decision he was sustained by the Passaic County Board of Taxation.

*Exhibits Annexed to Return.*

We think this judgment was correct. Statutes granting immunity from taxation must be construed strictly. Property claiming exemption must be clearly within the terms of the grant. *Rosedale Cemetery Association v. Linden*, 73 N. J. L., 421. When the Legislature exempted buildings "for cemetery use" it could hardly have had in mind such a structure as that involved in this appeal, for such buildings were not then known nor contemplated. It is true that from time immemorial mausoleums have been used as a place of sepulture for individuals or for members of an entire family, but never before, in this State at least, has the erection and maintenance of mausoleums and the sale of space therein been made a matter of commercial enterprise, conducted by a private business corporation.

10

20

The only possible ground for exempting this building from taxation is the fact that it is erected in a cemetery. If it were on land outside of a cemetery, no claim for its exemption could seriously be urged. It may be conceded that the use of the building is a "cemetery use," in the broad meaning of the phrase, but we do not believe that it is so used in the sense intended by the statute. The exemption of "ceteries and buildings for cemetery use erected thereon," as we understand it, includes the land and the permanent improvements thereon, which form a part of the realty and are essential for the use and enjoyment of the land.

30

*State v. Wilson*, 52 Maryland, 638.

*Appeal Tax Court v. Baltimore Cemetery Co.*, 50 Maryland, 432.

The descriptive phrase, "buildings for cemetery use," as we construe it, refers to buildings essential and necessarily incidental to the use of the ceme-

40

*Exhibits Annexed to Return.*

tery. The structure we are here considering fails to meet that test. The action of the Passaic County Board of Taxation should therefore be affirmed.

FRANK B. JESS,  
President.

10 (Endorsed)

## Board of Equalization of Taxes.

In the matter of the application of Mausoleum Builders of New Jersey for the cancellation of the Tax Assessment for the year 1914 on property situate in the Borough of Totowa, County of Passaic and State of New Jersey.

20 Memorandum by Mr. Jess.

## STATE OF NEW JERSEY,

## BOARD OF EQUALIZATION OF TAXES.

IN THE MATTER

OF

30

The Appeal of MAUSOLEUM BUILDERS OF NEW JERSEY, from the Assessment of Property in Borough of Totowa, County of Passaic, for the year 1914.

Judgment.

40

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

*Exhibits Annexed to Return.*

Board, by Mausoleum Builders of New Jersey in which it is alleged that an injustice has been done the said complainant by the assessment of certain property for taxation for the year 1914, located at Borough of Totowa in the County of Passaic consisting of a building known as a mausoleum erected on the lands located in the Laurel Grove Cemetery plot, 100 feet by 150 feet, and that said property is assessed higher than the true value thereof; 10

After hearing the argument of Michael Dunn for the complainant, and Daniel Campbell for the Borough of Totowa and after considering the same, it is, on this twenty-ninth day of June, nineteen hundred and fifteen, at a 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 \$35,000 on improvements, as reduced by the County Board of Taxation from \$35,500, being \$500 on land and \$35,000 on improvements, levied for the year 1914 on above described property, be affirmed and the appeal therefrom dismissed. 20

AND IT IS FURTHER ORDERED, that this order be certified to the Collector or Receiver of Taxes of Borough of Totowa, County of Passaic. 30

FRANK B. JESS, President.  
ALFRED T. HOLLEY,  
L. T. RUSSELL,  
GEO. T. BOUTON,  
Board of Equalization of Taxes.

Attest:

FRANK A. O'CONNOR,  
Clerk. 40

*Exhibits Annexed to Return.*

(Endorsed)

State of New Jersey  
Board of Equalization of Taxes.

10 *In re* Appeal of Mausoleum Builders of New Jersey vs. Bor. of Totowa, County of Passaic, for the year 1914.

Judgment.

Decided and filed June 29, 1915.

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

20

## MINUTES.

State House, Trenton, New Jersey,  
Tuesday, April 6, 1915.

The Board met at 10.30 A. M.

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

30

\* \* \* \* \*

The Board fixed Wednesday, April twenty-first, at 10.30 A. M., at the Court House, Elizabeth, for hearing Union County appeals, and Thursday, April twenty-second, at 10.15 A. M., at the City Hall, Paterson, for hearing Passaic County Appeals.

\* \* \* \* \*

City Hall, Paterson, New Jersey.  
Thursday, April 22, 1915.

40

*Exhibits Annexed to Return.*

The Board met at 10.15 A. M., for the purpose of hearing appeals.

Present: President Jess, Mr. Holley and Mr. Bouton.

The following calendar of appeals was called:

10

1. Mausoleum Builders of New Jersey v. Borough of Totowa.

Case heard, Mr. Michael Dunn appearing for the petitioner, and Mr. Daniel Campbell appearing for the respondent. Decision was reserved pending the filing of briefs.

\* \* \* \* \*

State House, Trenton, New Jersey,

20

Tuesday, June 29, 1915.

The Board met at 10.30 A. M.

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

\* \* \* \* \*

The Board took up for consideration cases heard and undecided, and ordered judgments entered as follows:

30

Mausoleum Builders of New Jersey v. Borough of Totowa.

In this case the Board ordered that the assessment of \$35,000, levied for the year 1914 on a building known as a mausoleum, erected on lands located in the Laurel Grove Cemetery, be affirmed and the appeal therefrom dismissed. A memorandum was filed by Mr. Jess setting forth the grounds of the Board's decision in this matter.

40

\* \* \* \* \*

*Exhibits Annexed to Return.*

---

DOCKET.

---

6128	MAUSOLEUM BUILDERS OF NEW JERSEY, Petitioner,	vs.	BOROUGH OF TOTOWA, COUNTY OF PASSAIC, Respondent.	Petr's Atty., Michael Dunn. Respdt's Atty. Assessment of 1914. Property: A building known as mausoleum, in Laurel Grove Cemetery. Plot, 100 x150 feet. Assessment of \$500 on land was cancelled by Co. B'd. Bldg., when completed, to be used for sepulture of the dead. Amount, \$35,000 Judgment Appeal dismissed.
10				
1915				

---

20	March 11	Petition filed.
	April 6	Hearing fixed for April 22nd at Pater- son and notice sent.
	" 22	Argument of counsel heard, case to be further submitted on briefs.
	June 29	Memorandum filed and judgment dis- missing petition entered.

---

STATE OF NEW JERSEY,

30

---

STATE BOARD OF TAXES AND ASSESSMENT.

I, IRVINE E. MAGUIRE, Secretary of the State Board of Taxes and Assessment, established under the provisions of Chapter 244, Laws of 1915, DO HEREBY CERTIFY, that the foregoing are true copies of the petition, judgment, memorandum and proceedings before the former Board of Equalization of Taxes of New Jersey in the matter of the appeal of the Mausoleum Builders of New Jersey from the

40

*Exhibits Annexed to Return.*

assessment of property located in the Borough of Totowa, County of Passaic, as the same are taken from and compared with the originals filed in the office of the former Board of Equalization of Taxes of New Jersey, on the eleventh day of March and other dates A. D. 1915, and now remaining on file and of record in the office of the State Board of Taxes and Assessment. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the (Seal) Board, at Trenton, this seventh day of September, A. D., 1915.

IRVINE E. MAGUIRE,  
Secretary. 20

(Endorsed)

Certified copy of the proceedings in Mausoleum Builders of New Jersey vs. Borough of Totowa, County of Passaic.

A True Copy,

WM. C. GEBHARDT,  
Clerk 30

**Reasons.**

## NEW JERSEY SUPREME COURT.

10 MAUSOLEUM BUILDERS OF NEW  
 JERSEY, a body corporate,  
 Prosecutor,

vs.

20 THE STATE BOARD OF TAXES AND  
 ASSESSMENT, successor to  
 Board of Equalization of  
 Taxes of New Jersey, and  
 BOROUGH OF TOTOWA,  
 Defendants.

On Certiorari.  
 Reasons.

The said Prosecutor, by Michael Dunn, its attorney, comes and prays that the assessment of taxes made against it by the Assessor of Taxes of the Borough of Totowa, in the County of Passaic and State of New Jersey, for the year A. D. 1914, may be set aside and reversed and for nothing holden for the following reasons:

30 1. That the land and the mausoleum building thereon assessed, being located in Laurel Grove Cemetery and being wholly devoted to cemetery use, are exempt from taxation under the laws of this State.

2. That the said mausoleum building is erected in the cemetery for cemetery use and, not being capable of being devoted to any other purpose, is exempt from taxation under the laws of this State.

40 3. That prior to the making of the said assessment for the year 1914, eleven crypts or graves had

*Reasons.*

been sold to individuals for the burial of the dead for which deeds of conveyance were to be given, subject to the rules and regulations of the Laurel Grove Cemetery Company, when the said Mausoleum Builders of New Jersey acquired title to the land, but no allowance or deduction is made in the assessment on the said building by reason of the sale of such crypts, although they belonged to individual owners and bodies were buried in some of them prior to the time the said assessment was made. 10

4. That under the laws of our State, it is illegal to assess for the purposes of taxation, cemeteries and buildings for cemetery use erected thereon and the judgment upholding the assessment for taxes is erroneous, illegal and void. 20

5. That the said assessment on the said mausoleum building is illegal and void under the provisions of the Special Charter of the Laurel Grove Cemetery Company, granted by the Legislature of our State, approved March 22nd, 1872, P. L. 755.

6. That the said Board of Equalization of Taxes of New Jersey, in upholding the said assessment on the said mausoleum building, committed error in that it failed to give the proper construction to the language of the provisions of Section 3, sub-division 6, of the General Tax Act of 1903, and to the provisions of the Special Charter of the Laurel Grove Cemetery Company, P. L. 1872, p. 755. 30

7. That the said Board of Equalization of Taxes of New Jersey erroneously decided that the mausoleum building assessed was not a building for cemetery use within the meaning of Section 3, sub-division 6, of the General Tax Act of 1903. 40

*Reasons.*

8. That the said assessment of taxes made by the Assessor of Taxes of the Borough of Totowa, and the judgment of the Board of Equalization of Taxes of New Jersey affirming the same, is in divers respects illegal, unjust and oppressive and should be set aside and cancelled and be for nothing holden.

MICHAEL DUNN,  
Attorney of Prosecutor.

(Endorsed)

New Jersey Supreme Court.

Mausoleum Builders of New Jersey, a body corporate, Prosecutor, vs. The State Board of Taxes and Assessment, successor to Board of Equalization of Taxes of New Jersey, and Borough of Totowa, Defendants.

On Certiorari. Reasons.

MICHAEL DUNN,  
Attorney of Prosecutor,  
Romaine Bldg.,  
Paterson, N. J.

Record of proceedings before State Board of Equalization of Taxes and stipulation as to the facts in evidence.

**Stipulation.**

NEW JERSEY SUPREME COURT.

MAUSOLEUM BUILDERS OF NEW  
JERSEY, a body corporate,  
Prosecutor,

vs.

THE STATE BOARD OF TAXES  
AND ASSESSMENT, successor to  
Board of Equalization of  
Taxes of New Jersey, and  
BOROUGH OF TOTOWA,  
Defendants.

On Writ of  
Certiorari.

10

20

It is hereby stipulated and agreed by the counsel for the respective parties, that the annexed transcript, verified by the affidavit of Walter S. Hammell, and certified to by L. T. Russell, President of the State Board of Taxes and Assessment, shall be received and accepted as evidence of the matters therein stated, to be used on the argument of the Writ of Certiorari in the above stated cause.

MICHAEL DUNN,  
Attorney of Prosecutor.

30

DANIEL L. CAMPBELL,  
Attorney of Defendant,  
Borough of Totowa.

40



*Proceedings.*

The decision of the County Board was that the land should not be assessed. The situation, to put it in a concrete way, and it is going to be a question of law in the final analysis, so I will be able to put this in a concrete way, and Mr. Campbell will contradict me if I make a mistake, my recollection may be wrong—it is an entirely new question for you to take up. This is the block of the cemetery which is located just above the city (indicating on map) and its charter authorizes it to acquire 200 acres of land for the purpose of laying out a cemetery, chartered in 1872, prior to the adoption of the new constitution, and this is the topography and the block map by which the lots in the cemetery have been laid out and by which sales have been made and the deeds given by the Cemetery Company to the different purchasers. There is now buried in this cemetery 16,200 people. Since about 1889 these burials have been made, and at this point, there has been a resolution passed by the Cemetery Company to sell to the Mausoleum Builders of New Jersey, which is a body corporate, incorporated under the General Incorporation Act—a copy of the certificate I am going to leave with you—and one of their objects of incorporation is to erect mausoleums. And they made a contract by resolution with our cemetery—I say “our” because a great many of the same people who are interested in the Cemetery Company are also interested in the Mausoleum Company; some are not because they didn’t want to take an interest in the enterprise and the resolution by which it gives us

10

20

30

40

*Proceedings.*

---

our ground was passed by the company, which was accepted by the Mausoleum Builders, and reads as follows:

10       “Whereas, the Mausoleum Builders of New Jersey, a body corporate of the State of New Jersey, is desirous of purchasing a tract of land in the Laurelgrove Cemetery for the purpose of erecting thereon, as a place of sepulture for the dead, what is known as mausoleums.

20       “Resolved, that this Company sell to the said Mausoleum Builders of New Jersey, a body corporate, for the purpose of erecting mausoleums for the burial of the dead, a certain plot of ground 100 x 150 feet, in the said cemetery, located west of the section”—here are the boundaries, along here and here and here (indicating on map)—“for the sum of \$10,000, the same to be paid as follows: \$1,000 when the ground is broken for the erection of the building”—that payment was made—“\$1,000 monthly thereafter until the whole sum is paid”—no other moneys have yet been paid to the Cemetery Company—

30       “And the whole purchase price shall be due and payable within one year from the date the first payment is made. The plans and specifications are to be approved by the Board of Directors of this Company. The President of the Laurelgrove Cemetery Company is hereby authorized to sign papers and deeds necessary to carry out the sale and to affix thereto the seal of the Company; the said mausoleum to be maintained after its completion under the terms and conditions of an agreement to be hereafter made between the parties hereto concerning the same. The land is to be sold subject to the

40

*Proceedings.*

requirements and regulations that govern the cemetery."

That agreement has not as yet been made, as to the terms and forms and guides by which the thing is to be run and operated, because the whole purchase price has not been paid up. However, the Mausoleum Builders went on, with the consent of the company, and have erected thereon a building. That building contains about 400 crypts. I don't know whether you gentlemen are familiar with mausoleums enough to know anything about them, but that will give you a general idea of the interior of a mausoleum (handing photograph to Board), just as if you were in church, and then there is the interior of it. I wish you gentlemen would have time, while you are here, to go up and see it. Each one of these squares indicates a crypt, which is about four by four. Outside is a marble slab. Inside is a slate slab which is hermetically sealed when the body is put in and it slides back just as if it were going into a mould, and the outer slab is also sealed and on that is the inscription of the name. This is arranged in tiers going up from the floor, one, two, three, four and five (so that along here would be a private section and on the other side is another section similarly run. And then, some of these pass in from the floor, from side to side, and they take a little different form. That will give you a general idea of the ground plan,—you see, passing in from this side and passing in from this side, and each floor is the same.

Now, then, this is a new idea that has developed in consequence of the progress that

10

20

30

40

*Proceedings.*

10 is being made in the study of the sanitary conditions of the country, and also in reference to the sentimental notion which a great many people are getting in reference to how to dispose of the dead. For instance, we have had places where old cemeteries are allowed to become neglected and go into decay. We have had to pass resolutions by which we have abandoned several old cemeteries, and, as far as that goes, locally here, right in this section here, in the conduct of one of our largest cemeteries, 4,000 bodies were moved from Sandy Hill Cemetery and taken and placed in this cemetery. We interred and took care of those bodies.

20 I cite that because the notion has given rise to the erection of such institutions as this, in consequence of the neglect and decay that has come to old cemeteries. The provisions that are made in this organization are for perpetual care and maintenance in the building of a sepulchre for the dead, and the arrangement made with the Cemetery Company is that the Cemetery Company has complete charge of the interment of all these bodies. The Mausoleum Builders simply erect the mausoleums, and after the crypts are disposed of, the agreement which will finally be made will provide, and does provide, for their care, and all the interments are made under provision of the Cemetery Company, in keeping with the health laws.

30  
40 So that the proposition now comes down to this point. The County Board had an idea that first the land and building ought to be assessed regardless of the provisions in the General Tax Law that reads as follows,

*Proceedings.*

section 3, paragraph 6: "Graveyards not exceeding ten acres of ground, cemeteries and buildings for cemetery use erected thereon." Now, it don't say whom the cemeteries are to be owned by, whether it is an individual, a corporation, or whom. It doesn't say whom the buildings are to be owned by.

10

Now, I am ready to show to you by the contractor who erected this building that it isn't adapted for any other purpose except the burial of bodies. For instance, here is a thing that cost six or eight thousand dollars. It is a patent ventilating process which lies in the rear of each one of these tiers. There is a pipe which leads down and that is carried off. And, for odors that arise, there is a pipe in top of each one, which goes up and runs into a system over the top of the door, and outside is a tank of formaldehyde and other chemicals which are constantly in place, and thereby the gas goes into the air.

20

So, I say, the whole thing is designed only and can only be used as a place for the burial of the dead. The interior of this building is of concrete. The exterior of the building is Indiana limestone, just like the City Hall.

30

Now, then, our contention is, first, that the Mausoleum Builders have no title, of course, to this land, having bought it simply on contract. They have erected this on the Cemetery Company's grounds which has all the permits and everything to conduct the cemetery business, which is not disputed, and that under the provisions of the Exemption Law, the Tax Law of 1903, this

40

*Proceedings.*

10 building and this land are exempt. There isn't any question about the land because the County Board has already set that assessment aside on the land, so it only leaves the question as to where the Mausoleum Builders stand with reference to this proposition. "A" holds a piece of land, which he agrees to sell to "B" at a stipulated price. "B" pays a part, doesn't complete the payment and puts up a building on your property and has not yet completed his payment at the time the assessment is made. Now, the status of the Mausoleum Builders, as I interpret the law, is that the Cemetery Company hold the legal title in trust for the purchaser until such time as the contract is completed, if completed, and in case it isn't completed, of course the Cemetery Company would have to be protected and the Mausoleum Builders would never be allowed to take that building off their property. That, I think, is possibly the correct legal status of the proposition. You don't disagree with that, do you, Mr. Campbell?

20  
30 Mr. Campbell: No. I have prepared a brief here that covers it.

The President: Mr. Bouton was just suggesting, if it were entirely a question of law, why not have it submitted in that way.

Mr. Campbell: I am perfectly willing. I am perfectly willing to submit the question in a brief. There is no disputed fact.

The President: Has Mr. Dunn's statement of the facts embraced everything that ought to go in as the facts in the case?

40 Mr. Campbell: As to his side. Mr. Dunn also, I think, rests his claim on the exemp-

*Proceedings.*

---

tion laws of cemeteries. In view of that, I would like to have it admitted that the Cemetery Company did not acquire any land for the purpose of a cemetery until the year 1887. I have examined the records and am prepared to testify to it.

10

Mr. Dunn: That is right. The strongest point, I think, to be impressed upon the Board, is this question: first, that it is a new question; second, I have a gentleman here who will testify that this building is worthless, except what there might be in a slab or something of that kind. We have here a statement from Mr. MacFarland, which was before the County Board, showing, prior to April 15th, 1914, there had been, I think, eleven crypts—that was, prior to the 20th of May—sold in the mausoleum to different purchasers. Those purchasers, under the terms of the charter under which those sales are to be made, are required to have a deed of each of these crypts, the same as a lot in the cemetery, because he holds it subject to the will of the cemetery, and the cemetery is obliged, under the charter, to exercise perpetual care. That is one of the things they discovered.

20

30

So that our cemetery has always arranged to provide perpetual care for all lots, and consequently the maintenance of this building is also provided for in the future, which will pass into the hands of the Cemetery Company after these crypts are one by one disposed of and the purchase money, and so forth, and that will then pass completely to the Cemetery Company as a fund for the maintenance and care of the

40

*Proceedings.*

---

building; for example, the roof, and so forth, which will require expense; the top coping, and so forth. You and I know winter storms will, in time, cause disintegration, and they will have to be replaced.

10

So that the point is: first, that this is a building on cemetery ground in a cemetery to carry on the business under its charter; in fact it is a building usable only for cemetery purposes, and, therefore, it comes within the exemption, regardless of whether it was put up by the Mausoleum Builders. And in addition to that fact, eleven crypts were sold in here, and these crypts or lot owners had an interest before this tax was levied and have an interest to-day, some of them having been paid in full, and some are being paid in instalments. All these lot owners are interested, and when their contract is completely paid for, our charter of the Laurel Grove Cemetery Company provides, the same as a common cemetery company, that no land or plot can be sold or deed given except for burial of dead, as I have quoted in the brief. That is within the policy of the Legislature all the way through, whether the plot was owned by an association or individuals.

20

30

40

The point on which the local board decided that they thought that the assessment could be sustained was this, and you will see at once the fallacy of it, that the Mausoleum Builders was a corporation, organized under the General Corporation Act, and was a corporation, therefore, a business corporation organized for profit, and that in consequence, notwithstanding it had erected this building usable only for burial

*Proceedings.*

purposes in a cemetery, that they couldn't sell it except for such purposes, and then only under control and supervision of the Cemetery Company; they go upon the theory that, therefore, it must be subject to assessment, regardless of the clear language of the Exemption Act, which is "graveyards not exceeding ten acres of ground, cemeteries and buildings for cemetery use erected thereon." While our charter also provided, as you will see in the reference I make to the charter, wherever you buy a lot—for instance, you might buy a lot that had fifteen graves. Some friend of yours might come along, and the charter provides, by the consent of the company, you could assign to him a lot from your plot in the cemetery, but only with the consent of the company.

The President: I want to ask a question. Suppose there were not that language in the act, including cemetery buildings erected for cemetery uses—how does it read—"cemetery and buildings for cemetery uses"? Suppose it simply said cemetery, would you still contend that this was exempt?

Mr. Dunn: I contend this, that the language seems to make it absolutely clear.

My contention is further, as you will see in going over the brief, that this mausoleum with 400 crypts is simply one large grave, one large burial plot, whether it is one, two, three, or one above the other, and it is the plan, aside from possibly the notion which some people have of cremation, it is the plan that will be the coming plan adopted in the future in most of our large cities on account of the fact that it puts the remains in a place where they can be kept sacred

*Proceedings.*

---

and perpetually cared for without destruction, demolition or anything to do it harm.

10 Mr. Campbell: Gentlemen, I don't propose to argue this, but I just want to emphasize one point, which perhaps is not gone  
into in the brief with any great amount of care, and that is this: first, that the consideration for exemption under the law of the cemetery charter is not now existent, for reasons which have already been passed by this Board in the Mount Pleasant Company case, and others, which cases I have set out, so that the only exemption that can be claimed is under the General Tax Act of 1903. As to the meaning of that  
20 exemption, to what buildings, "for cemetery use erected thereon," it will have to be construed in connection with the general legislative and judicial policy of the State as to what constitutes a cemetery. Since the constitutional amendment there have been no cemeteries organized in New Jersey for profit. These cemeteries which we have around this neighborhood are all under charters specially granted by the State.

30 Nowadays, since those amendments, the policy of the State, legislatively and judicially, is that a cemetery is a mutual concern, conducted by trustees, and with that view in mind, when the Statute of 1903 was framed, they were made exempt from taxation; they didn't consider the possibility of a money-making corporation and evading the legislative policy, but that the words "cemeteries and buildings erected thereon for cemetery purposes" applies to  
40 such buildings as the Cemetery Company there has. They have a chapel down near

*Proceedings.*

---

the main entrance, which, I think, is undoubtedly a building for cemetery purposes, a building used by the Cemetery Association in connection with the running of it. I think it has been held that a green house, conducted by a cemetery, was not a building for cemetery purposes, but that is a building conducted by the Cemetery Company in connection with the cemetery, and, under the statute, is exempt. The statute didn't intend that a money-making corporation, with a charter, would be not only permitted to enter into the business, but to put fifty or sixty thousand dollars into a beautiful marble building, making a profit out of it, and yet consider themselves a cemetery association, and I will leave the matter with the Board, with those remarks along that line.

10

20

The President: I think one of the difficulties we will have in meeting this question is in passing on that language as to whether that means a building for use in connection with the cemetery, or whether it uses the word "cemetery" in the sense of being for burial purposes for the interment of the dead. I suppose that is all discussed in the briefs.

30

Mr. Campbell: We can't give you any judicial help on that. Cases in other courts are valueless.

The President: You think there is enough before the Board in the way of facts?

Mr. Dunn: Except possibly as to what would be the value of that building.

Mr. Campbell: I didn't take it that that was under discussion.

40

*Proceedings.*

---

10

Mr. Dunn: It wasn't for this reason. The building was assessed \$35,000. So far as the cost of the building is concerned, there is no disputing it that it cost that much money, but the point is this: we are in the same position that the State Board was in, in reference to some other case some time ago. I don't know whether you gentlemen were on the Board or not——

The President: The Princeton School, you mean?

Mr. Dunn: Yes.

The President: There they had wreckage value?

20

Mr. Dunn: Yes, wreckage value, or market value. If this building was assessed at its market value, you couldn't get to-day—you couldn't get for that wreckage \$500. The City, they can't take it off, it isn't paid up, but if you are going to assess it, we have to assess it with reference to the market value, not with reference to what it cost, but with reference to what it is worth to a purchaser.

(It was agreed that the above case be submitted on briefs.)

30

40

**Affidavit.**STATE BOARD OF EQUALIZATION  
OF TAXES.

---

 MAUSOLEUM BUILDERS OF NEW  
JERSEY,

Petitioner,

vs.

BOROUGH OF TOTOWA,  
Respondent.

10

} Affidavit.

---

 STATE OF NEW JERSEY, }  
COUNTY OF MERCER, } ss. :

20

WALTER S. HAMMELL, being duly sworn, according to law, on his oath deposes and says that the foregoing is a true transcript of the argument taken in the above-entitled cause before the State Board of Equalization of Taxes on Thursday, the 22nd day of April, 1915, at Paterson, New Jersey, and is a carbon copy of the original transcript furnished to the said Board.

WALTER S. HAMMELL.

30

Sworn and subscribed before me  
this 28th day of September, 1915.

EDNA M. MOORE,  
Notary Public of N. J.

(Seal)

40

**Certification.**

## NEW JERSEY SUPREME COURT.

MAUSOLEUM BUILDERS OF NEW  
JERSEY

10

v.

STATE BOARD OF TAXES AND  
ASSESSMENT and BOROUGH OF  
TOTOWA.

On Certiorari.

Under the provisions of Chapter 244 of the Laws  
of 1915, establishing the State Board of Taxes and  
Assessment, and consolidating therein the Board of  
20 Equalization of Taxes of New Jersey and the State  
Board of Assessors, we hereby certify that the fore-  
going is a true copy of the testimony on file in this  
office in the matter of the appeal of Mausoleum  
Builders of New Jersey from the tax assessment  
levied for the year 1914 on certain property in  
the Borough of Totowa, County of Passaic, said  
testimony having been taken before the Board of  
Equalization of Taxes of New Jersey on Thursday,  
the twenty-second day of April, nineteen hundred  
30 and fifteen.

STATE BOARD OF TAXES AND ASSESSMENT,

By L. T. RUSSELL,  
President.

Dated, October 2, 1915.

40

(Filed February 3, 1916.)

## NEW JERSEY SUPREME COURT.

NOVEMBER TERM, 1915.

10

MAUSOLEUM BUILDERS OF NEW  
JERSEY, a body corporate,  
Prosecutor,

vs.

THE STATE BOARD OF TAXES AND  
ASSESSMENT, Successor to the  
Board of Equalization of Taxes  
of New Jersey, and BOROUGH  
OF TOTOWA,  
Respondents.

On Certiorari.

20

Argued November 4th, 1915; decided February  
3rd, 1916.

1. A mausoleum containing four hundred crypts,  
to be used as a place of sepulture for the dead,  
built by an independent corporation on land in the  
Laurel Grove Cemetery, at Totowa, is not exempt  
from taxation. It is not a building within the  
meaning of the tax act exempting "buildings for  
cemetery use erected thereon."

30

2. Words, in a statute, descriptive of material  
things, should be construed in reference to the his-  
tory of the times when the statute was passed, and  
applied to things then known to be in existence.

40

*Opinion.*


---

Before Justices GARRISON, TRENCHARD and BLACK.

Michael Dunn, Esq., for Prosecutor.

Daniel L. Campbell, Esq., for Respondents.

The opinion of the Court was delivered by

10 BLACK, J.

The writ of certiorari in this case was brought to review an assessment of taxes made in the Borough of Totowa, Passaic County, real estate \$500 and building \$35,000. The County Board of Taxation cancelled the assessment on real estate and confirmed the assessment on the building. The State Board of Equalization of Taxes affirmed the judgment of the County Board of Taxation. The

20 prosecutor seeks to have the assessment on the building cancelled, on the ground that it is exempt from taxation. The salient facts are: The prosecutor is a corporation organized under the general corporation act of New Jersey. Its objects, as stated in the certificate of incorporation, are in broad and sweeping terms, which includes the building of mausoleums. The land on which the building assessed stands is a plot one hundred feet in width and one hundred and fifty feet in depth, in the

30 Laurel Grove Cemetery. The Laurel Grove Cemetery was incorporated by a special act of the Legislature, March 22, 1872, P. L. 1872, p. 755. It is authorized to hold in fee a tract of land not exceeding two hundred acres for the use and purpose of a cemetery. The land was purchased in 1887. A resolution of the Laurel Grove Cemetery Company provides for selling the plot of land to the prosecutor. The Mausoleum Builders Company of New Jersey may erect what is known as a mauso-

40 leum, as a place of sepulture for the dead, the plans and specifications to be first approved by the direc-

*Opinion.*

tors of the Cemetery Company. The said mausoleum is to be maintained, run and operated, after its completion, under the terms and conditions of an agreement to be made between the prosecutor and the cemetery company. The building on the land contains about four hundred crypts. These crypts are to be sold to such persons as may desire to buy them, as a perpetual resting place for the dead. 10

The single question presented for solution in this case is whether this mausoleum is taxable, *i. e.*, is it a building under section 3, subdivision 6 of the general tax act of 1903, p. 396, which exempts "Graveyards not exceeding ten acres of ground, cemeteries and buildings for cemetery use erected thereon"? 20

In construing statutes exempting property from taxation it is settled beyond further discussion, by a long line of adjudged cases, that such statutes granting immunity from taxation must be construed strictly. Our Court of Errors and Appeals has said that the true rule upon this subject is accurately stated thus, "A grant of exemption from taxation, being in the nature of a renunciation of sovereignty, must invariably be construed most strictly against the grantee, and can never be permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require." *Sisters of Charity of St. Elizabeth v. Cory*, 73 *N. J. L.*, 706; *Cooper Hospital v. City of Camden*, 70 *ib.*, 478. This rule was applied by this court in construing the word "property" in the act to incorporate rural cemeteries, as not including personal property of cemetery associations. *Rosedale Cemetery Assn. v. Linden*, 73 *ib.*, 421. 30

That this mausoleum is not exempt from taxation, it may be said, to use the language contained 40

*Opinion.*

in the State Tax Board's conclusion, when the Legislature exempted buildings for "cemetery use" it could hardly have had in mind such a structure as that involved in this appeal, for such buildings were not then known or contemplated. It is true  
10 that from time immemorial mausoleums have been used as a place of sepulture for individuals or for members of an entire family, but never before, in this State at least, has the erection and maintenance of mausoleums and the sale of space therein been made a matter of commercial enterprise, conducted by a private business corporation. In construing an act of the Legislature the court may and ought to examine and take into consideration the history of the times when the statute was  
20 passed. *Coleman v. Kelly*, 71 Kan., 811, 70 L. R. A., 450. For an interesting and illustrative case, in which the opinion was written by Mr. Justice REED, bearing upon the meaning of the words "electric or chemical motors" in a statute, see *Green v. City of Trenton*, 54 N. J. L., 92, 96.

The State Board of Equalization of Taxes ruled that "buildings for cemetery use" meant buildings essential and necessarily incidental to the use of the cemetery. This, we think, is the correct construction of the statute and in its application to the mausoleum in this case, that it is not exempt from tax-  
30 ation.

Again, it is urged by the prosecutor that under the provisions of the Laurel Grove Cemetery Company's charter, P. L. 1872, p. 755, sec. 9, this mausoleum is exempt from all taxes and assessments whatsoever. This is without legal merit and needs no discussion.

The tax assessed against the prosecutor is there-  
40 fore affirmed.

## NEW JERSEY SUPREME COURT.

MAUSOLEUM BUILDERS OF NEW  
JERSEY, a body corporate,  
Prosecutor,

vs.

THE STATE BOARD OF TAXES AND  
ASSESSMENT, Successor to the  
Board of Equalization of Taxes  
of New Jersey, and BOROUGH  
OF TOTOWA,  
Respondents.

On Certiorari. 10  
Rule  
Affirming  
Assessment.

The Court having heard the argument of counsel  
and inspected the assessment of taxes removed by 20  
the writ in this cause and duly considered the rea-  
sons filed, it is ordered that the said assessment of  
taxes be in all things affirmed, with costs.

Entered February 23, 1916.

On motion of

DANIEL L. CAMPBELL,  
Attorney of Respondent. 30

(Filed March 28, 1916.)

NEW JERSEY  
COURT OF ERRORS AND APPEALS.

10 MAUSOLEUM BUILDERS OF NEW  
JERSEY, a body corporate,  
Prosecutor-Appellant,

vs.

20 THE STATE BOARD OF TAXES AND  
ASSESSMENT, Successor to the  
Board of Equalization of Taxes  
of New Jersey, and BOROUGH  
OF TOTOWA,

Respondents.

On Certiorari.  
Grounds  
of Appeal.

Mausoleum Builders of New Jersey, Prosecutor-Appellant herein, within the time required by the statute in such case made and provided, comes and sets forth its grounds of appeal:

30 1. Because the Court, at the hearing of said cause, refused to reverse and set aside the judgment of the State Board of Equalization of Taxes for one or more of the following reasons urged by prosecutor-appellant.

(a) That the land and the mausoleum building thereon assessed, being located in Laurel Grove Cemetery and being wholly devoted to cemetery use, are exempt from taxation under the laws of this State.

40 (b) That the said mausoleum building is erected and constructed in the cemetery for cemetery use

*Grounds for Appeal.*

only, to wit: the burial of the dead, and said building is so constructed that it cannot be used for any other purpose, and it is therefore exempt from taxation under the laws of this State.

(c) That prior to the making of the said assessment for the year 1914, eleven crypts or graves therein had been sold to individuals for the burial of the dead, for which deeds of conveyance were to be given, subject to the rules and regulations of the Laurel Grove Cemetery Company, when the said Mausoleum Builders of New Jersey acquired title to the land, but no allowance or deduction is made in the assessment on the said building by reason of the sale of such crypts, although they belonged to individual owners and bodies were buried in some of them prior to the time the said assessment was made. 10

(d) That under the laws of our State, it is illegal to assess for the purpose of taxation cemeteries and buildings for cemetery use erected thereon and the judgment upholding the said assessment for taxes is erroneous, illegal and void. 20

(e) That the said assessment on the said mausoleum building is illegal and void under the provisions of the Special Charter of the Laurel Grove Cemetery Company, granted by the Legislature of our State, approved March 22nd, 1872, P. L. 1872, p. 755. 30

(f) That the Supreme Court, in affirming the judgment of the said Board of Equalization of Taxes of New Jersey, in upholding the assessment on the said mausoleum building, committed error in that it failed to give the true and proper construction and meaning to the language of the pro- 40

*Grounds for Appeal.*

---

visions of Section 3, Sub-division 6, of the General Tax Act of 1903, and to the provisions of the Special Charter of the Laurel Grove Cemetery Company, P. L. 1872, p. 755.

10 (g) That the said Board of Equalization of Taxes of New Jersey erroneously decided that the mausoleum building assessed was not a building for cemetery use within the meaning of Section 3, Sub-division 6, of the General Tax Act of 1903.

20 2. Because the Court erred in ruling that "when the Legislature exempted buildings for cemetery use, it could hardly have in mind such a structure as that involved in this appeal, for such buildings were not then known or contemplated."

3. Because the Court erred in ruling that said mausoleum building is not a building for cemetery use for the reason that its erection and maintenance and the sale of space therein is a matter of commercial enterprise conducted by a private business corporation.

30 4. Because the Court misinterpreted the language and intent of the Legislature of the State of New Jersey in applying the provisions of the General Tax Act of 1903, Section 3, Sub-division 6, to the assessment of the said mausoleum.

5. Because under the provisions of Section 6 of Chapter 233 of the Laws of this State for the year 1916, the said mausoleum building is exempt from the said assessment for taxes for the year 1914.

MICHAEL DUNN,  
Attorney for Prosecutor-Appellant.

# New Jersey Court of Errors and Appeals

MAUSOLEUM BUILDERS OF NEW  
JERSEY, a body corporate,  
Appellant,

vs.

THE STATE BOARD OF TAXES  
AND ASSESSMENT, successor to  
Board of Equalization of Taxes  
of New Jersey, and BOROUGH  
OF TOTOWA,  
Respondents.

On Certiorari.  
On Appeal  
from  
Supreme  
Court.

## **BRIEF OF MICHAEL DUNN, of Counsel for the Appellant.**

### **Statement of Facts.**

The appeal in this case brings up for review the judgment of the Supreme Court affirming the judgment of the Board of Equalization of Taxes of New Jersey, of which the State Board of Taxes and Assessment is the successor. The matter was brought before the Board of Equalization of Taxes on an appeal from the Passaic County Board of Taxation. The prosecutor and appellant in this case appealed to the Passaic County Board of Taxation for the cancellation of a tax assessment imposed for the

year 1914 against the Mausoleum Builders of New Jersey, a body corporate of this State, levied by the assessor of the Borough of Totowa, in said county. The tax bill, No. 789, assessed the property as follows:

Real Estate,	\$500.00
Building,	\$35,000.00

It was contended on behalf of the prosecutor that this property was exempt from taxation under our statute, and that the assessment was illegal and void and should be cancelled. The County Tax Board after hearing the case decided that the assessment on the *land* should be cancelled, but that so much of the assessment as was on the *building* should stand. From this judgment an appeal was taken to the Board of Equalization of Taxes of New Jersey. The case was heard by that Board and on June 29th, 1915, judgment was rendered affirming the decision of the Passaic County Board of Taxation and upholding the assessment for \$35,000 on the building known as a mausoleum, erected on lands located in Laurel Grove Cemetery. (See pp. 12-14.) This writ of certiorari brings up for review that judgment.

At the time the Board rendered judgment a memorandum of their reasons was filed (pp. 7-10), and in the record sent up by the Board we have a complete statement of the facts that were before the Board at the time of the hearing. Counsel for the respective parties in interest have stipulated (p. 19) that the return and the transcript of the proceedings shall be received and accepted as evidence of the matters therein stated, to be used on the argument in this cause.

The land referred to in the assessment is a plot in the Laurel Grove Cemetery. This cemetery is conducted by the Laurel Grove Cemetery Company,

a body corporate, having a special charter granted by the Legislature of our State, approved March 22, 1872 (P. L., p. 755).

This company had authority to establish a cemetery in Passaic County to the extent of two hundred (200) acres of land. In 1887, under full authority of its charter and its permits, it purchased land and located a cemetery in what is now known as Totowa Borough. The grounds were laid out in lots and plots, with walks, avenues and roadways leading from the highway to its different sections. These grounds have been only used for burial purposes since the cemetery was established there in 1887.

The land in question on which this assessment was made is a plot of ground one hundred feet in width by one hundred and fifty feet in depth, located west of Section 4 in the center of the cemetery, bounded on the north by Overlook Road and on the south by Upper Mead Road. The Mausoleum Builders of New Jersey have agreed to purchase said plot of land for the purpose of erecting mausoleums for the burial of the dead, for a certain consideration, a part of which was paid and the balance remains unpaid. A resolution accepting their proposition was passed by the Laurel Grove Cemetery Company and it provides that the Mausoleum Builders of New Jersey may erect mausoleums on the land in question for the burial of the dead, but that the plans and specifications for the same shall be first approved by the directors of the cemetery company, and that the mausoleum is to be maintained, run and operated, after its completion, under the terms and conditions of an agreement to be hereafter made between the parties concerning the same. The resolution further provides that the land is to be conveyed subject to the rules and regulations governing the cemetery, as far as the same are applicable (Case, pp. 22-23).

During the year 1913 the Mausoleum Builders of New Jersey began to erect on the said land a place of sepulture for the dead known as a mausoleum. It was completed about April 1st, 1915. The building is designed and constructed and can be used for no other purpose than a burial place for the dead, and it is subject to the rules and regulations of the cemetery company (Case, pp. 25, 27).

The following is a copy of the resolution passed by the cemetery company and which was accepted by the Mausoleum Builders of New Jersey (p. 22) :

“RESOLUTION.

WHEREAS, the Mausoleum Builders of New Jersey, a body corporate of said State, is desirous of purchasing a tract of land in the Laurel Grove Cemetery for the purpose of erecting thereon, as a place of sepulture for the dead, what is known as a mausoleum,

RESOLVED, that this company do sell to the said Mausoleum Builders of New Jersey, a body corporate, for the purpose of erecting thereon a mausoleum for the burial of the dead, a certain plot of ground one hundred feet by one hundred and fifty feet in said cemetery, located west of Section 4, which is bounded on the north by Overlook Road and on the south by Upper Mead Road, for the sum of ten thousand dollars, the same to be paid as follows, to wit: One thousand dollars when the ground is broken for the erection of the building and one thousand dollars monthly thereafter until the whole sum is paid, and the whole purchase price

shall be due and payable within one year from the date the first payment is made. The plans and specifications are to be approved by the Board of Directors of this company. The president of this company is hereby authorized to sign any papers and deeds necessary to carry out this sale in the name of the company, and to affix thereto the seal of the company. The said mausoleum is to be maintained, run and operated, after its completion, under the terms and conditions of an agreement to be hereafter made between the parties hereto concerning the same. The land is to be sold subject to the rules and regulations governing the cemetery as far as same are applicable.

LAUREL GROVE CEMETERY Co.,  
Francis C. Van Dyk, (seal)  
President.

S. M. STANCLIFF, Vice-Pres.,  
Mausoleum Blds. of N. J.  
(seal)"

This is the contract for the sale of the land and the erection and control of the building. Only \$1,000 has been paid on the purchase price. The balance, \$9,000, is long past due.

**POINT I.**

**We contend that this assessment is illegal and void and should be cancelled because this land and the building in question is exempted from taxation under the General Tax Act of 1903.**

Section 3, paragraph 6, of the General Tax Act of 1903 (C. S. 5083) reads as follows:

“Exemptions—Graveyards not exceeding ten acres of ground.

Cemeteries and buildings for cemetery use erected thereon.”

The tax against the land was cancelled by the County Tax Board, but the assessment and tax on the mausoleum building was upheld. This was erroneous.

Under the plain reading of this act we can find no ground justifying this tax. At the outset it must be borne in mind that a tax is levied on property. It matters not as to whose name the property stands in. The Legislature by this act intended to exempt “cemeteries and buildings for cemetery use erected thereon.” The land in question is in a cemetery and is under the control of the cemetery company, which still has title to the same, and the building thereon was erected by the Mausoleum Builders of New Jersey for cemetery use and the same cannot be used for any other purpose (p. 25, l. 28).

“A cemetery is a place or area of ground set apart for the burial of the dead” (*Am. & Eng. Enc. Law*, Vol. 5, p. 781). The Century Dictionary defines burial, “The act of depositing a dead body in any place where it is intended to remain.”

The building called a mausoleum is analogous to a number of graves arranged for the burial of the dead. These separate graves are called crypts. They are built of concrete and arranged in tiers and occupy the whole building.

In *People v. Richards*, 15 N. E., 371, Justice PECKHAM, in rendering the opinion for the Court of Appeals of New York, in 1888, gives consideration to a mausoleum erected above ground in a burial plot in a cemetery. It contained twelve compartments or graves and the description and use of the same is identical with the building under consideration in this case (p. 372). The Court concludes (p. 375) that "the building was intended solely for the interment of dead bodies and the structure itself can be put to no other possible use without altering its nature and purpose. \* \* \* We come to the belief that it is really nothing more than a grave above ground."

In *Pitcairn v. Homewood Cemetery Co.*, 77 Pa., 1105, the Supreme Court of Pennsylvania affirms a decree as to the right of a lot owner to locate a mausoleum in such part of his lot as he saw fit and the Court cites with approval the case of *People v. Richards* (*supra*) that "a mausoleum is really nothing more than a grave above ground." The Court also says that a mausoleum is a "sepulchral structure."

The appellant here stands in the same position as the individual owner of any other burial lot in the cemetery. The building called a mausoleum simply affords a different kind of grave arranged above ground rather than under ground. If, instead of being placed above ground, this structure had been built under ground and then used only for the purpose of burying the dead, it could not be lawfully taxed under this statute.

It must be plain from this description that the mausoleum erected on this lot is such a building for cemetery use (the burial of the dead) in the cemetery as contemplated by the language of the statute of 1903.

The only title which the purchaser of a lot in Laurel Grove Cemetery can acquire is what is known in law as a base fee. The land is held subject to the conditions imposed by the charter, and further subject to the rules and regulations made by the cemetery company for the government of the same, in keeping with the provisions of its charter.

In Section 2 of Laurel Grove charter there is a provision (P. L. 1872, p. 755) that transfers of lots or rights therein may be made by the owner or owners thereof by simple assignment annexed to the deed that may be given by the cemetery company, but such assignment shall not be valid until it is recorded on the books of the company. These crypts when sold by the appellant are assigned to the purchaser in keeping with this provision of the charter. This power being granted by the Legislature, how can it be said that it was not to be exercised unless the owner was subject to the penalty of being taxed? The facts do not justify the conclusion of the Supreme Court that a mausoleum was not intended to be included in the exemption.

An inspection of the building upon which this tax is levied will demonstrate that it is a building erected for cemetery use only. It cannot be used for any other purpose. This is due to the following facts: *First*, the peculiar and special manner in which the mausoleum is constructed to be suitable as a place for the burial of the dead. *Second*, the provisions of the charter of the cemetery company prohibits the cemetery being used for any other

purpose except the burial of the dead. *Third*, because the terms and conditions imposed under the contract providing for the erection and use of the building also prohibits its use for any other purpose except as a place for the burial of the dead, and that its control shall be under the supervision of the cemetery company. The mere fact that it was erected by the Mausoleum Builders of New Jersey in this cemetery does not give any right to impose this tax upon the same or on the land on which it is erected. The exemption granted by the General Tax Act of 1903 applies to the *cemetery and to buildings for cemetery use erected thereon*. This means that the "land and buildings" are exempt.

You will observe that the statute does not state that to be exempt the building erected in the cemetery for cemetery use shall be the property of the cemetery company. It does not state that it shall be the property of an individual or of a corporation. The language of the act granting exemption is, "ceteries and buildings for cemetery use erected thereon."

Turning to the statute concerning ceteries, we find an act entitled, "An Act to Enable Owners of Land Used for Private Burying Grounds to Provide for the Improvement, Protection and Preservation of the Same" (C. S., Vol. 1, p. 392). At page 387 we also find an act entitled, "An Act to Protect Grave Yards and Burying Plots Owned by Individuals and Unincorporated Associations."

It is plain, therefore, that the General Tax Act applies to all grounds and buildings used as a cemetery, and it cannot, by any process of logic, be restricted to societies incorporated under the General Cemetery Act. Such land and buildings thereon are necessarily dedicated to public use. This building cannot be devoted to any other use except

the burial of the dead. The crypts in the same correspond to graves in the ground. The management, the regulation and the control, and the assignment of the title to these crypts is all under the control of the Laurel Grove Cemetery Company. The purchasers of crypts in the building become assignees of the same and interested as owners in the same manner as though they had purchased and been conveyed a lot or single grave in the cemetery by the Laurel Grove Cemetery Company. Such patrons succeed to the rights of the mausoleum builders in the crypt and land and hold the same, subject to the rules and regulations of the Laurel Grove Cemetery Company. The crypt owner is thereby vested with a right in the land and building. *When you assess the building you are taxing his grave.* It is admitted that eleven crypts were sold before April 15, 1914. This assessment was not made until after May 20, 1914. If this assessment is allowed to stand it would be a lien on those eleven graves.

We therefore contend that the County Board was in error in refusing to cancel this tax and that the State Board and the Supreme Court were also in error in affirming the judgment.

On the principle of their ruling the Board would be justified in imposing a tax on any individual lot owner in the cemetery who had erected a monument, a vault, or a mausoleum upon his lot. The Van Dyk mausoleum in Laurel Grove Cemetery, the Hobart mausoleum in the Cedar Lawn Cemetery, and the vaults and mausoleums of individuals in different cemeteries throughout the State would each be subject to taxation under this reasoning and under this decision.

"Cemeteries and buildings for cemetery use erected thereon" is the language of the exemption. It makes no difference who is the owner of the building.

In *Rosedale Cemetery v. Linden*, 73 N. J. L., at page 422, the object in the legislative mind in granting these exemptions was well stated by Justice GARRETSON:

“It is in accordance with the wish of mankind that the places where the dead are buried should be protected and preserved against the interference of possible sales for unpaid taxes or under execution for debts, and be kept free from all molestation or desecration. These legislative exemptions of cemetery property are the expression of that wish.”

A reference to the reasons given by State Board (p. 9) indicates that the conclusion was reached by taking a very narrow view of the statute. The memorandum of the State Board states the grounds as follows: *First*, that the Legislature in 1903 could hardly have had in mind such a structure as this mausoleum, for such buildings were not then known nor contemplated. In the next sentence it is admitted that from time immemorial mausoleums have been used as a place of sepulchre for individuals and families. Justice BLACK, in rendering the decision for the Supreme Court, repeats these statements and uses them as a foundation to support the judgment. It is manifestly unjust, in the face of these contradictory statements, to say that the Legislature did not have knowledge of the existence of such structures. If the reasoning of the Court is sound, then it is the duty of every tax assessor and county board of taxation to see that all monuments and mausoleums in cemeteries should be assessed and compelled to pay tax. This policy was never intended.

In the *second* place the decision is based on the ground that at the time the act was passed the

erection and maintenance of mausoleums and the sale of space therein had not been made a matter of commercial enterprise, conducted by a private business corporation. That such mausoleums existed and were in use is admitted. How long mausoleums have been in operation as a commercial enterprise in different places in Europe and in different parts of this country does not appear in the stipulated facts and admissions, but we submit that the absence of proof on this question does not justify this Court in refusing to accord to the language of the Exemption Statute of 1903 its true and natural meaning. Most of the large cemeteries in this State were operating under private charters in 1903 when this exemption statute was passed, and their incorporators, as will be seen by referring to their charter, were getting some profit on the capital which the stockholders had invested in the business at the time of their organization. An inspection of the charter of Laurel Grove Cemetery Company (P. L. 1872, p. 757) shows that it was the intent of the Legislature to give profit to the incorporators. Section 7 (p. 757) of the charter expressly provides that 25 per cent. of the net proceeds of lots and plots shall be funded for embellishing and maintaining the cemetery and the balance shall be received and divided among the stockholders and the sum funded shall be free from taxes and assessment.

Section 9 provided that the land and lots and parcels, when held by the company and when conveyed, should be exempt from taxes and assessment and should not be liable to be sold under execution.

See also charter of the Cedar Lawn Cemetery Company, originally granted in the name of Cedar Cliff Cemetery Company (P. L. 1865, p. 587; P. L. 1867, p. 128). In this charter similar provisions

are made for distribution of profits realized from the sale of lots. Like provisions are to be found in other charters granted by the Legislature prior to 1875. It was necessary to make these grants to establish under proper supervision suitable places for the burial of the dead. It required the investment of a large amount of capital to secure the lands and lay out and embellish the same, for the accommodation of people in the different communities who were able to pay for the protection and privileges granted to them by these organizations, conducted by men of intelligence and business standing. It was the transition period from the graveyard at the village church or on the farm. This was the first step in the progress and development which to-day has culminated in the use of mausoleums.

In view of the fact that in our statutes we find the legislative policy of the State has been to exempt from taxation graveyards, and that in the special statutes granted by the Legislature authorizing the establishment of cemeteries on a large scale, exemptions from taxation were granted as one of the inducements to capital to become interested in their establishment and management, and a right given to conduct the same for profit, we contend that the reasoning of the State Board and of the Supreme Court in concluding that the Legislature did not intend in the Tax Act of 1903 to exempt mausoleums because they were managed as a matter of commercial enterprise is not supported by the facts.

The Supreme Court concedes that, under the Act of 1903, the lands of the cemetery company cannot be taxed, although the cemetery is being conducted as a commercial enterprise, and at the same time it declares that the mausoleum, although conducted in the same way and as a cemetery, pro-

viding a place for the burial of the dead, must be taxed.

The inference is unwarranted. It can only be justified upon the ground that the Court has power to legislate as well as to adjudicate. This is not the rule under our constitution and laws. The Courts only adjudicate.

In this case the building sought to be assessed is nothing more or less than a group of graves or burial places in the Laurel Grove Cemetery. The burial of the bodies is effected not in the usual manner of interment in the cold earth, but in a mode more humane and more in keeping with the investigations of sanitary science. The great shock that is frequently experienced by the relatives when the body is interred in the ground is by this new method avoided. Here protection and perpetual care for the last resting place is guaranteed and provided. This new method will go far to avoid the unsightly conditions due to neglect in many of the cemeteries in the State, and as a consequence the preference for interment in a mausoleum is growing throughout the country. The building can only be used as a burial place for the dead.

The Mausoleum Builders of New Jersey is only a corporate agent of the Laurel Grove Cemetery Company, arranging a modern method of burying the dead, using a portion of the cemetery land for the purpose, acting under the control and supervision of the cemetery company. These crypts stand in the same position as to their owners as do the graves and plots in the cemetery. The charter of the Laurel Grove Cemetery Company recognizes and gives authority for such an arrangement as this. The building is clearly exempt from taxation under the statute.

**POINT II.**

**We contend that the Supreme Court was in error in holding that the mausoleum was not a building for cemetery use within the meaning of the statute.**

In reaching this conclusion the Supreme Court legislates rather than adjudicates. The reasons given for the conclusion show a misconception of the object of the statute and a disregard of the language.

A reference to the reasons given by the present Board (Case, p. 9) indicated that the conclusion was reached by taking a narrow view of the meaning of the statute. The view expressed by Justice PARKER (*Hoboken v. North Bergen*, 43 N. J. L., p. 146, at 148) shows the true position to be taken by the Court in dealing with a question concerning exemption of cemeteries. In that case an attempt was made to assess a house and five acres of ground which was part of the cemetery, which consisted of seventeen acres in area, but the house was being used by the superintendent and the five acres were being cultivated as a garden and no burials had yet been made therein. Upon this house and five acres an assessment was levied. The use of the house was a part of the compensation of the superintendent. The case came before the Court in 1880. At that time the General Tax Law exempted cemeteries from taxation. The Court in dealing with the question held that to impose the tax on that house and five acres would be a narrow construction of the General Act. He indicated in the opinion that the construction of the exemption for cemeteries should be broad and not narrow, and the assessment was set aside.

In the present case you must keep in mind that the exemption in the statute is not given to ceme-

tery associations, "but it is given to cemeteries and buildings for cemetery use erected thereon." This language is clear and unambiguous and it cannot be abridged. It is not a question of ownership that brings the Mausoleum Builders within its scope. The sharp question is presented in the language of the exemption. Does it mean what it says?

The distinction to be kept in mind is well illustrated by the ruling of the Court in *McCarter v. The Firemen's Insurance Co.*, 74 N. J. E., page 372. Here a sharp distinction is pointed out by the Court between public corporations owing peculiar duties to the public and individuals whose land is affected with the public interest. In view of the large number of cemeteries throughout the State, of different forms of creation and different methods of establishment, we must give a broad construction to the clear language of the statute of 1903. It is impossible to give it a narrow meaning.

That it was the legislative intent to exempt mausoleums by this statute of 1903 is evidential from the statute passed concerning mausoleums in 1916 (P. L., p. 477). Section 6 of this act expressly provides as follows:

"All mausoleums, vaults, crypts or structures intended to hold or to contain the bodies of the dead, now erected or which may hereafter be erected and located within any duly authorized cemetery organized in accordance with the laws of the State of New Jersey, shall be exempt from taxation in like manner as such cemeteries are now exempt by law."

The provisions of this statute are applicable to this case and justify this Court in setting aside the assessment of the tax on this building.

In *Whittlesey v. Town of Windsor Locks*, 97 *Atl.*, 316, Justice WHEELER, in rendering the judgment of the Connecticut Supreme Court, says:

“Statutes curing irregularities in the assessment and levy of taxation, when jurisdictional and not in contravention of constitutional provision, are not invalid because retrospective. \* \* \* The legislative power to prescribe such conditions, means, and methods, in the assessment and levy and for the collection of taxes as it may determine, is undoubted. What it may prescribe it may dispense with and it may, by its act, cure the irregularity of a non-observance of the requirements it might have dispensed with.”

*Cooley on Const. Limitations*, 7th Edition,  
p. 529.

*Cooley on Const. Taxation*, p. 517.

*Sutherland on Stats.*, 1891, p. 631.

“A statute of this character—within the legislative jurisdiction—and concerned as it is with a matter of highest public consideration, is in furtherance of justice and for the public welfare and should be sustained unless it conflicts with a vested right.”

*State v. City of Newark*, 27 *N. J. L.*, 185; at page 197, holds:

“But laws curing defects which would otherwise operate to frustrate what must be presumed to be the desire of the party affected, cannot be considered as taking away

vested rights. The Courts do not regard rights as vested contrary to the justice and equity of the case."

*Baldwin v. Newark*, 38 N. J. L., 158, holds:

"If a retrospective intention clearly appears on the face of the statute the Court will give it that effect unless to do so will violate some constitutional provisions."

The language of Section 6 as quoted above has a retrospective intention; it violates no constitutional provision, and is applicable to the case at bar. This act cancels this tax and assessment. It is a declaration of the well-settled legislative policy of the State that the place in a cemetery where the dead are buried shall not be taxed.

See also *Sedgwick on Construction of Statutory and Constitutional Law*, second edition, page 346, and notes cited.

The provisions of the Act of 1916 is a complete answer to the legal conclusions on which the decision of the Supreme Court is based, as to the intent of the Legislature to grant this exemption.

*Green v. Trenton*, 54 N. J. L., page 92 (Case, p. 38), is not analogous to the case at bar. There the Court was merely dealing with the facts as to whether or not electric or chemical motors as a propelling power was in existence in 1886 so that the use of them would require the erection of obstructions upon public highways. In that case the Court was dealing with mechanical and scientific terms of doubtful and uncertain meaning, but there is no doubtful or uncertain meaning in the language used in the Tax Act as applied to the case at bar. This statute of 1916 clears the atmosphere

and removes all doubt as to the legislative intent to exempt mausoleums from tax.

It was necessary to use such language to cover the different varieties of places for the burial of the dead, and conditions existing to create and preserve an equality among all. The mere fact that Mausoleum Builders of New Jersey is a corporation, and under its charter has a right to engage in other enterprises than erecting mausoleums, does not make this building liable to an assessment. If that was a correct view, then all mausoleums, monuments and vaults of every private individual in cemeteries should be taxed, if such individuals carried on business and owned other taxable property.

We therefore contend that the construction given by the State Board and the Supreme Court to this statute of 1903 is too narrow and the grounds upon which the conclusion is based are unsound.

### **POINT III.**

**We also contend that under the provisions of the Laurel Grove Cemetery Company's charter the tax cannot be lawfully assessed.**

The company is created by a special charter (P. L. 1872, 755, approved March 22nd, 1872).

Section 9 of the charter provides:

“And be it enacted, That the said corporation shall have, use and exercise all the rights and privileges incident to a corporation herein stated, and shall be exempt from

all taxes, assessments and charges upon their capital stock and the property which they may acquire, hold or possess and the real estate of said corporation, and the said lots and parcels when conveyed by the corporation or when sold to individual proprietors, or held by any person, shall be exempt from all taxes and assessments whatsoever, and shall not be liable to be sold in execution, or subject to attachment, or applied to the payment of debts by assignment under any insolvent or bankrupt laws, but may be conveyed under such regulations as the said directors may adopt."

A consideration of this language shows that not only was the land exempt in the name of the corporation, but that said lots and parcels, when conveyed by the corporation, or when sold to individual proprietors, or held by any person, shall be exempt from all taxes and assessments whatsoever. Under our rules of statutory construction, the word "person" as used in the charter signifies a corporate body as well as an individual.

Compiled Statutes, 4972, Section 9.

Therefore, under the language of the ninth section of this charter, the mere fact that the Mausoleum Builders have entered into an agreement to purchase this land does not destroy the exemption granted by law and does not justify the imposition of this tax upon it.

We have examined the cases in which the question of tax exemption under special charters has been discussed, and we are firmly of the opinion that under the settled law of this State the charter

of the Laurel Grove Cemetery Company is irrepealable.

In *Mt. Pleasant Cemetery v. Newark*, 52 N. J. L., 539, Chief Justice BEASLEY, speaking for the Court of Errors and Appeals, held at that time that a tax when sought to be imposed was invalid, and that Mt. Pleasant Cemetery Company had a charter which was at that time in full force, and that no part of the same was repealed or modified.

Where the immunity from taxation is not a mere gratuity, but contains the elements of a contract—consideration—such a statute will be upheld as a contract. It is the same rule that was followed in the well-known *Dartmouth College* case.

An inspection of the charter shows that in 1872 the Legislature appreciated the necessity for a large cemetery in this part of the State. The area for the purpose was fixed at not to exceed two hundred acres of land. The powers for the conducting of the cemetery and the obligations imposed upon the incorporators and the exemptions to which they might be entitled are all defined in the act. The consideration which the State exacted was that the incorporators should not be entitled to receive the full profit which might be realized from the sale of the lands. They were given the right to take most of the profits. They had in mind undoubtedly the necessity of the creation of some fund whereby such a cemetery and its embellishments, shrubbery and fences should be erected and maintained and preserved—to avoid just such a condition as has been witnessed in different parts of the State in respect to graveyards and burying. This necessitated the investment of capital and was beneficial to the public.

In Section 7 of the charter it is stipulated as follows:

“And be it enacted, That on the sale of any or all of the lots or plots in said cemetery, not less than twenty-five per centum of the net proceeds shall be appropriated or funded for the further embellishment and maintaining the improvements, fences and other accommodations of said cemetery grounds, and the balance received shall belong to and be divided among the stockholders according to their several interests and whatever sum shall be funded, as aforesaid, the same shall be free from all taxes and assessments and no taxes or assessments shall be imposed on the lot owners therefor.”

From this language it will be seen that the State exacted that 25 per centum of the net proceeds of all the sales of land should be appropriated and funded for the proper embellishment and maintaining of improvements, fences and other accommodations of said cemetery grounds. The lands are sold and held subject to this condition. This is a binding contract against the incorporators in favor of the State, acting for the protection of the purchasers of lots in the said cemetery. It was a provision to insure perpetual care.

The same section also provides that the sum so funded shall be free from taxes and assessment, and that no taxes or assessments shall be imposed on the lot owners therefor.

We thus have before us a charter in which there are parties, subject-matter and consideration moving from each party to the other; on the one hand is a promise by the Legislature to the company

that if it purchase such a tract of land for the purpose of a cemetery and use it for that purpose, the lands so held by it or its lot owners shall not be subject to tax or assessment, provided that the company appropriate 25 per centum of the proceeds of all sales to a permanent fund for the upkeep of the cemetery; on the other hand, we have the acceptance of the charter by the incorporators and stockholders and the investment of their capital in the land under the terms and conditions of the charter.

The land and building now attempted to be assessed is suitable only for burial purposes, is located in the heart of the cemetery, and is a part of the land used for cemetery purposes under the charter. This land was sold subject to the rules of the Laurel Grove Cemetery Company (Case, p. 22).

Among those rules set forth in the deeds given by the company to lot purchasers is the following:

“The proprietor of each lot shall have the right to erect any proper stones, monuments or sepulchral structures thereon, subject to the approval of the directors.”

Needless to say, the mausoleum erected on the land in question is a sepulchral structure.

The contract of exemption in the charter of the Singer Manufacturing Company is quite analogous to the one here under consideration. It was upheld.

*Hancock v. Singer Mfg. Co.*, 62 N. J. L.,  
289, at 328.

The Legislature never intended by the Act of 1903 to abolish these exemptions without providing an adequate substitute.

**CONCLUSION.**

**We therefore submit that error was committed in upholding the assessment on the mausoleum brought up for review and that the same should be declared illegal and should be set aside and cancelled.**

Respectfully submitted,

MICHAEL DUNN,  
Of Counsel for Appellant.