

N. J. Court of Errors and Appeals.

NEW YORK BAY CEMETERY Co.,

Plaintiff in error.

vs.

CLARA BUCKMASTER,

Defendant in error.

Brief for Defendant in error.

This is a writ of error sued out by the New York Bay Cemetery Company, the defendant in an action of ejectment brought by Clara Buckmaster to recover the possession of 95 lots in the cemetery of the New York Bay Cemetery Company (Case, p. 3 and 4). The defendant pleaded the general issue (Case, p. 4, line 29).

The issues were tried before Judge Knapp and a jury; the Court directed a verdict for the plaintiff, and judgment was entered in her favor for the possession of the premises described in the declaration (Case, p. 5). The plaintiff is the daughter of Thomas H. Buckmaster who died in 1873 (Case, p. 17, line 26). He left a will which was duly admitted to probate, which devised all his estate to his children, subject to a life estate in their mother, which life estate has since expired (Case, pp. 16, 17, 95). After the death of the plaintiff's mother, a partition suit was brought for the partition of the lots in the Cemetery of which Mr. Buckmaster died seized, and the lots in question in this suit were assigned to Clara

Buckmaster by the decree in partition (Case, p. 17, lines 4 to 13 ; p. 96).

Thomas H. Buckmaster derived his title to the lots in the Cemetery in two ways. Either of them is sufficient and complete. His first chain of title is as follows : In 1853, there were 30,000 lots of land in the Cemetery remaining unsold, and belonging to the Cemetery Company. The Cemetery Company executed deeds to various parties, all of which are similar in tenor, and the material language of which is as follows : (Ex. 1, p. 74.)

“Know all men by these presents that the NEW YORK BAY CEMETERY COMPANY in consideration of one dollar paid to them by T. H. Buckmaster, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey to the said T. H. Buckmaster, his heirs and assigns, thirty-three hundred and thirty-three lots of land in the New York Bay Cemetery, situate in the Township of Bergen and County of Hudson and State of New Jersey, in common and undivided in all the lands as the same are laid out on the registered Map or plan of the said Cemetery and now remaining unsold and belonging to said Company, said grounds and Cemetery containing in all remaining unsold at this time, thirty thousand lots besides streets and avenues, as laid out on said Map or plan.

“To have and to hold the hereinabove granted premises to the said T. H. Buckmaster, his heirs and assigns forever, for the uses of Sepulture only and to or for no other use whatever. Subject, however, to the conditions and limitations and with the privileges specified in the rules and regulations now made or that may hereafter be made and adopted by the managers of the said Cemetery for the government of the lot holders and visitors to the same.”

The aggregate number of the lots described in these various deeds was 30,000, and they were all dated in 1853. After they had all been executed and delivered, the Cemetery Company executed another deed, conveying all the 30,000 lots to the grantees in the several prior deeds (Ex. 23, pp. 87-89). The form of this deed is precisely the same as

that of the deed to Buckmaster before mentioned, except the description, which is as follows: "All the lots of land in the New York Bay Cemetery, situate in the Township of Bergen, and County of Hudson, and State of New Jersey, as the same are laid out on the registered map or plan of the said cemetery, and remaining unsold, and belonging to said Company, and also the streets and avenues as laid out on said map, on the day of in the year of our Lord one thousand eight hundred and fifty-three, subject to the right of the public in said streets and avenues as at present existing, said grounds and cemetery containing in all, remaining unsold at this time, thirty thousand lots, besides streets and avenues as laid out on said map or plan" (Case, p. 88, lines 5-18).

Whether or not the effect of the prior deeds was to vest in each grantee a fractional portion of the lots taken as a whole, the numerator of the fraction being the number of lots specified in each individual deed, and the denominator being 30,000, this subsequent deed (Ex. 23), vested all the lots described in it in the grantees as tenants in common. This is distinctly expressed in the latter: "This deed is executed to confirm the title to thirty thousand lots in said cemetery, conveyed to the parties of the second part as tenants in common by the said company by several deeds" (Case, p. 88, lines 38-41).

The several grantees mentioned in the deeds referred to and again mentioned in Exhibit 23, conveyed by several deeds the lots which had been conveyed to them to Thomas H. Buckmaster, so that in 1854, he became vested with the title to all the 30,000 lots. These deeds are Exhibits 4 to 22, pp. 77 to 87. It appears that lot books were kept by the Cemetery Company, containing a registry of the names of the parties who bought lots (Case, p. 24, lines 22 to 40; p. 25; p. 26, lines 1 to 8). By an inspection of these books the 30,000 unsold lots described in the deed (Ex. 23), could all be identified.

His second chain of title is as follows: After

Thomas H. Buckmaster thus became the owner of the lots in the Cemetery which were unsold in 1853, for some reason, not appearing in the bill of exceptions, it was thought best that deeds should be executed by the Company to Lansing Zabriskie, who was then the attorney for Mr. Buckmaster, and took the title, as a matter of form, for Mr. Buckmaster's benefit (Case, p. 27, lines 35 to 40). There are several of these deeds to Mr. Zabriskie. (Exhibits 24 to 30, pp. 90 to 94). They all convey to Zabriskie, his heirs and assigns, certain lots as "delineated and laid down on the register map or plan of the said cemetery by the numbers." Then follow the numbers and a specification of the section in which the lots are situated, and of the avenues between which these sections are situated, and it appears that each lot contains eighty superficial feet (Case, p. 90, lines 20, 34).

On June 22, 1871, Lansing Zabriskie conveyed all of these lots (1411) to Thomas H. Buckmaster, describing them in the same manner as they were described in the deeds to him (Case, p. 94, lines 37-40 ; p. 95, lines 1-25). Among these lots are those claimed by the plaintiff (Case p. 95, line 10). George Buckmaster, the son of the plaintiff, located these lots from the record book of the defendant (Case, p. 24, lines 3-20).

Kattenstroth, formerly superintendent of the defendant (p. 20, lines 10-15) testified that the Cemetery was divided by avenues into sections, that there were signs showing the names of the avenues and the designation of the sections, and that each 40th lot was marked in each section (Case p. 20, lines 20-40 ; p. 21, lines 1-28). He testified that he could take the deeds to Zabriskie, go to the Cemetery, and locate the lots from the description in the deeds (Case, p. 21, lines 28-40 ; p. 22, lines 1-20). He also testified that there were maps in the office of the Cemetery, showing the location of the lots (Case, p. 21, lines 18-28). The map was produced by the defendant, and offered in evidence by the plaintiff (Case, p. 25, lines 15-26).

The plaintiff further showed that the conveyances from the defendant to Zabriskie, and from him to Buckmaster, were registered on the books of the defendant (Case, pp. 66, 67).

The defendant's evidence is substantially as follows :

1. No consideration was paid the Cemetery Company by Zabriskie for the deeds to him. P. 27, lines 15-28. What consideration Buckmaster paid, Zabriskie did not know, nor did he know what was the nature of the transaction between Buckmaster and the Company (Case, p. 28, lines 1-15).

2. A deed from Benjamin H. Broomhead to the defendant, which conveyed a hundred acres of land, in which deed certain by-laws of the Company were incorporated, which fixed the price of lots, and provided that the debts, encumbrances and expenses of the Company should be paid by their Trustees (Case, p. 28, lines 20-30. Exhibit 2, pp. 97-100).

3. The loss of the Book of Minutes of the defendant prior to 1878. This was proved by various witnesses (Case, pp. 30-45). The defendant then gave secondary evidence of the contents of the book tending to show that the elections of the Trustees of the defendant, for more than twenty years before 1878, probably twenty-five years before 1878, were held in New York City (Case, p. 46, lines 20-30). There was an entry in these minutes of a settlement of Buckmaster's account for \$30,000, by a conveyance of lots, but whether the lots referred to are the lots in question did not appear (Case, p. 47, lines 30-40 ; p. 49, lines 10-20). The witnesses who proved the contents of the book would not undertake to say that there was no entry of a meeting held at 9 Exchange Place, Jersey City (Case, p. 49, lines 20-25 ; p. 52, lines 17-20). The year in which the records and the minutes purport to begin is not definitely shown (Case, p. 52, lines 20-24 ; p. 53, lines 40, 41).

One of the witnesses called by the defence, received a deed from the Company in 1865, which was given to him at its office in New York, and was signed T. H. Buckmaster, Secretary, and George T. Bradley, Register. He testified that his title to this lot had never been disputed, and that he had often voted as a lot owner at meetings of the Company (Case, p. 54, lines 15-33). Various newspaper notices of meetings for the election of Trustees, held in the City of New York, were next put in evidence (Case, pp. 55-57). The witness who proved these, testified that the meeting in 1871, for the election of Trustees, was held in New Jersey, at No. 9 Exchange Place (Case, p. 58, lines 15-24; p. 59, lines 22-32). During all these years, when the elections were held in New York City, the Trustees who were elected were the only acting officers of the Company (Case, p. 58, lines 5-12). They acted as such without objection (Case, p. 59, lines 8-14). It was proved that a meeting of the Trustees of the defendant was held at 9 Exchange Place, Jersey City, in 1871, at which a resolution was adopted that all the acts which had been done in the City of New York, should be confirmed by the New York Bay Cemetery Company in Jersey City at that meeting (Case, pp. 69, 70; p. 71, lines 1-14).

Points for Defendant in Error.

FIRST.

Ejectment was the proper remedy in this case.

(a) Ejectment is a possessory action. All that is involved in it is the right of possession, and the party, whether plaintiff or defendant, in whom is vested the right of possession is entitled to succeed without regard to who has the fee.

Hoboken L. & I. Co. *v.* Hoboken, 7 Vr.,
543.

Dummer *ads.* Den, Spencer, 86.

Clay v. Ransome, 1 Memf. 445.

(b) But in this case the fee was in the defendant in error and the absolute title was joined to the right of immediate possession. The Legislature *required* the Cemetery Company to grant the fee to the purchaser of lots.

Pamphlet Laws, 1850, p. 194.

(c) Ejectment will lie when the plaintiff is entitled to the possession, and he must be entitled to the possession if he is entitled to the use, for they are inseparable.

Dummer *ads.* Den, Spencer, 86, 109.

The title obtained by the conveyances from the Cemetery Company was a fee—true, a base fee—but a fee and not an easement or license. This is expressly provided by the act incorporating the defendant.

Charter of Cemetery, P. L. 1850, p. 194.

Such a conveyance passes title to the soil.

Matter of Brick Pres'n Church, 3 Edw.
Ch. 155.

Windt *v.* German Reformed Church, 4
Sandf. Ch. 471.

In the case of Hackney Union *vs.* Abney Park Cemetery Co., 8 Law Rep., Q. B., 515 (referred to by the learned Justice at the Circuit in directing verdict), while the conveyance was to the grantee and his heirs and assigns forever; this grant was limited by *a trust* created by the same grant.

So too the cases in New York since 1847, by the Statute of which year it was expressly provided that the Cemetery Company should hold the fee while the lot owner should take but a license or easement to use the land for burial purposes, would not be au-

thority in this case as those decisions are expressly grounded on that provision of the Statute of 1847.

Buffalo City Cemetery *v.* Buffalo, 46 N. Y., 503.

So also in Pennsylvania—the case of Kincaid's Appeal, 66 Pa. St., 411, the conveyance was of a right to bury only and the opinion in that case should have no weight in this.

On this subject, the question is purely technical. It is simply, What is the form of remedy to which the plaintiff should resort in order to try her title? If the interest conveyed to her in the lots was purely an easement, her remedy would be in trespass. If it was a title to the land, her remedy is in ejectment. It is manifest that the Legislature which created the Cemetery Company had the right to prescribe what interest in the lots should be conveyed by the Company to the various lot owners. The advantage to the lot owners of a conveyance in fee would be the practical one that if the Cemetery Company after the conveyance to him, should become embarrassed, the title to his lot would be free from any embarrassment on that account, whereas if the title remained in the Cemetery Company, it would be liable to be taken in execution for the debts of the Company. It appears in the bill of exceptions from the recitals in the deed from Broomhead to the defendant that Broomhead and others were about to convey land to the Cemetery Company to constitute the cemetery grounds of said Company, and that the compensation for the land, the debts, encumbrances and expenses of the Company, and improvement of grounds, erection of edifices, and salaries of officers would have to be paid (Case, p. 99, lines 1-10 ; p. 100, lines 4-10). It further appears that in 1853, the land of the Cemetery Company was subject to three mortgages (Case, p. 75, l. 7-12). Under these cir-

cumstances, the object of the provision in the Act of Incorporation that conveyances to the lot owners should be in fee, is apparent.

It is not contended that these lots in the possession of the lot owners are not subject to certain rights on the part of the Cemetery Company.

1. The use to which the lot owners could put the lots is for the purpose of sepulture only, and of course incidentally thereto, for the purpose of ornamenting lots by shrubbery, flowers, etc., and by the erection of proper monuments and enclosures.

2. The Company had the right, which is distinctly reserved in the deed, to make rules and regulations for the government of the lot owners, and visitors to the same (Case, p. 74, lines 35-41).

The fact that the defendant in error or her assigns can use the lots "for the purpose of sepulture only" does not cut down her title from a fee to an easement. Covenants in deeds can so restrict the grantee's rights that he will not be allowed to build upon a particular portion of the granted premises.

Gawtry v. Leland, 4 Stewart, 385 (Long Branch Case).

Kirkpatrick v. Peshine, 9 C. E. Green, 207.

Winfield v. Henning, 6 C. E. Green, 188.

Other covenants have been sustained, the effect of which ~~was~~ was to set apart a tract of land for the purpose of residence only, and which so restricted the grantee's rights that he was enjoined from quarrying stone upon his own land. In this case too the grantee's rights were subject to rules and regulations made by the Trustees.

Haskell v. Wright, 8 C. E. Green, 389 (Llewellyn Park Case).

Yet it was never even suggested, that the grantee, under a deed so restricted, did not take a fee. The words: "to the said T. H. Buckmaster, *his heirs and assigns*:" are the controlling words, and accurately fix the nature and quality of the estate granted.

Where the title to a piece of land is thus situated, the interest of each party therein is undoubtedly an important and valuable interest. What its exact quantity and description shall be are really only a matter of name. If the Legislature chooses to designate the interest of the lot owners as a fee, it follows of necessity that the remedy of the lot owner for any injury to his title is by an action proper to the ownership of the fee, that is to say, by ejectment. The judgment in this action does not divest or purport to divest the easement of the defendant in the lots in question any more than the judgment in an action of ejectment would divest the title of the defendant to a right of way over the premises described in the writ, if he should own such a right of way. The title to the right of way could not come in question in the ejectment suit, and of course could not be determined by it.

Child *v.* Chappell, 9 N. Y., 246.

If the defendant in error had brought an action of trespass to vindicate her title to the lots in question, is it not certain that the plaintiff in error would have answered that under the conditions in the deed, and the by-laws made pursuant to the right reserved in the deed, it could keep the lots in order and its entry upon the lots for that purpose or for any purpose could not therefore be a trespass.

See special by-laws (Case, p. 111, lines 9-15). But these by-laws recognize, in numerous places, the fact that the persons to whom lots are conveyed are the owners of the lots (Case, p. 105, lines 37-41). "All persons are prohibited from * * entering any

individual enclosure without leave of the owner." "No disinterment will be allowed in any lot or graves without an order from the owner or owners thereof" (Case, p. 107, lines 20-22). Workman or gardeners are to be employed by the lot owners, but to work subject to the direction and control of the officers of the Cemetery (Case, p. 108, lines 18-28). All lots owned by different individuals in connection, must be enclosed at one time, and in a uniform manner (Case, p. 110, lines 10-12). In reference to these matters, the form of remedy is unimportant, but it is important that there should be a remedy, and the Court should in determining what that remedy is, follow strictly the language of the Legislature and uphold the remedy that that language requires.

SECOND.

The description and location of the premises in question were shown with sufficient distinctness to warrant a recovery.

Case, p. 9, l. 35; pp. 10-16; p. 25, l. 19;
pp. 74-95 incl.; p. 96, l. 11.

A deed conveying all the rights, etc., of grantor to all lots and parts of lots in the City of P., and all undivided interest in said town, will operate to convey a particular lot in that city.

Prettyman v. Walston, 34 Ill., 175.

A deed conveying "all our rights, etc., and all real estate which we own, or have, or claim situate in B, and particularly all that belongs to us as heirs of A. B., Dec'd," is not void for uncertainty, and will pass the interest of grantors in any land in said B, shown to have been owned by said A. B.

Bird v. Bird, 40 Me., 398.

“All vendor’s lots” in a certain town, is sufficient to convey all vendor’s interest derived by deed from Commissioners who laid out the town.

Harmon v. James, 15 Miss., 111.

A, who owns 1200 acres, sells 500 acres, not designating which—held good as conveying a proportional undivided interest.

Pipkin v. Allen, 29 Mo., 229.

“All lands belonging to grantor in province of N. Y.,” will pass the title to such lands.

Jackson v. DeLancey, 11 Johns., 365.

Courts will always sustain conveyance if practicable.

Hull v. Fuller, 7 Vt., 100.

Jackson v. Clark, 7 Johns., 217.

THIRD.

The deeds were properly admitted in evidence.

Whatever error or imperfections there may have been originally in the acknowledgment or proof of any of them could not be urged against their admissibility at the time of the trial which was in 1886.

Rev. N. J., 163, § 57.

Of the 23 deeds conveying the 30,000 lots, all but two were recorded on the 9th day of October, 1854, and of those two, one was recorded on the 2d day of February, 1854, and the other on the 12th day of September, 1860.

Case, pp. 74–89 incl.

The Secretary of a corporation is the proper custodian of its seal and when he affixes it to an in-

strument, the presumption is that he did it by direction of the corporation, and those disputing the instrument have the onus to show that he acted without authority.

Manhattan Co. v. N. J. Stock Yard Co.,
8 C. E. Gr., 165.
Legget v. N. J. Mfg. and Banking Co.,
Sax., 541.
Evans v. Lee, 11 Nev., 194.

FOURTH.

The entire 30,000 lots vested in the testator of the defendant in error by virtue of the series of deeds offered in evidence showing the conveyance of all these lots to several parties by the Cemetery Company and by these several grantees to Buckmaster.

In order to make several deeds parts of one and the same transaction it is not necessary that they should bear the same date.

Gammon v. Freeman, 31 Me., 243.
Harrison v. Phillips' Academy, 12 Mass.,
456.

Nor is it necessary that the same persons should be grantors and grantees.

Gammon v. Freeman, *supra*.
Clark v. Munroe, 14 Mass., 351.
Gilliam v. Moore, 4 Leigh, 30.

A map referred to in a deed is a part of it.

Morgan v. Moore, 3 Gray 319, 322
Lincoln v. Wilder, 29 Me., 169.)
Davis v. Rainsford, 17 Mass., 211.
Hunt v. Holland, 14 Id., 149.

We submit that by this series of deeds together with the register map or plan in them referred to Buckmaster, became seized in his own right in fee

of all the 30,000 unsold lots then remaining in the original Cemetery plot or plan.

FIFTH.

But if those deeds were void and conveyed no title the title must still have remained vested in the Cemetery Company.

Whatever title the Cemetery Company had in the lots in controversy in this action was, therefore, conveyed to Lansing Zabriskie in 1871 by the deeds from the Cemetery Company to him in which the lots were distinctly conveyed by section letters and lot numbers.

Case, p. 90, l. 1 ; p. 92, l. 12, l. 31 ; p. 93, l. 10, l. 26 ; p. 94, l. 1, l. 20.

And the absolute title to those lots was conveyed to Buckmaster, the testator of the defendant in error, by the deed from Zabriskie to him also in 1871.

Case, p. 94, l. 36.

So that in either event the title to the lots in controversy must have vested in the testator of the defendant in error.

SIXTH.

The burden of proof is on the plaintiff in error to show that the conveyances to Buckmaster were not authorized by a legal Board of Trustees of the Cemetery Company. This plaintiff in error failed to do. The Court cannot conjecture on this subject. The presumption will be that the Trustees of a Corporation are legally elected until the contrary is proved.

Angell and Ames, Corp. § 516.

Hill *v.* Manchester Water Works Co.,
5 B. and Ad., 874.

Clarke *v.* Imperial Gaslight Company,
4 Id., 325.

Citizens Insurance Co. *v.* Sortwell, 8
Allen, 223.

The testimony of George Buckmaster is that the 1871 meeting was held in New Jersey (Case, p. 58, l. 19); and also that at a meeting of the Trustees held at 9 Exchange Place, Jersey City, New Jersey, on the 11th day of June, 1871 (Case, p. 68, l. 23), a resolution was adopted by the 1871 Board ratifying and confirming all the acts of the Company which had been done in New York City (Case, p. 71, l. 10).

SEVENTH.

The defendant cannot take advantage of the conditions in the deed from Broomhead to it, in reference to the price at which lots should be sold. This condition was manifestly reserved for the benefit of Broomhead, in order to enable him to be paid as large an amount as possible upon his scrip which he received for his interest in the land (Case p. 99, lines 19-27). The grantor is the only person who can take advantage of a breach in the conditions of a deed.

Southard *v.* N. J. Cent. R. R. Co., 2
Dutch., 13.

4 Kent. Com., 122, etc.

Washburn Real Property, 2d vol., 4th
Ed., page 13.

Shep. Touchstone, 149.

EIGHTH.

The deeds executed by the defendant are conclusive against it. It is well settled that a man cannot defend himself in an action of ejectment, nor set up title in a third person, against his own covenant or grant.

Den. *v.* Winans, 2 Gr., 1.
 Den. *v.* Gardner, Spencer, 556.
 Den. *v.* Pine, ~~4~~ Wash. C. C. Rep., 691.
 Den. *v.* Gifford, Coxe, 197.
 Cox *v.* Lacy, 3 Littell's Rep., 334.

NINTH.

In ejectment, the Supreme Court deals only with the legal title and cannot inquire into the title under an implied trust.

Mulford *v.* Tunis, 6 Vroom, 256.

The question of the consideration paid by Zabriskie for the conveyance to him was therefore immaterial, and did not raise any question for the jury.

TENTH.

The exceptions on pp. 20 to 22, upon which the first, second and third assignments of error are made, are to the rulings of the Court allowing the plaintiff to show that a person familiar with the Cemetery could locate the lots in question from the description in the deeds to Zabriskie. This is the uniform practice in ejectment suits, where there is a dispute as to the location, to call a surveyor or other expert, and show how he can practically locate the property in question. Such evidence is always admissible.

Surget *v.* Little, 13 Miss, 319.

But even if this were otherwise, the description in the deed is clear, and any error in admitting the evidence did not prejudice the plaintiff in error and is therefore no ground for ~~reversal~~ reversal.

~~Rodsuburgh~~ *v.* ~~Rosebury~~
~~Abbott~~ *v.* ~~Hanson~~, 4 Zabris., 491.

The exception at p. 67 is to the admission in evidence of the lot-book of the defendant which showed what lots had been conveyed prior to the conveyance of the 30,000 lots. This is the defendant's own book, and certainly admissible in evidence against it, and it was manifestly competent for the parties identifying the lots which were conveyed to Buckmaster by showing what the lots were which had previously been conveyed to others.

N. R. Meadows Co. v. Shrewsbury ch. 2 Tab. 422, 428
Highland Turnpike Co. v. McKean, 10 John. 162
 ELEVENTH.

Three exceptions were taken to the rulings of the Court, allowing secondary evidence of the proceedings at the meeting of the Trustees in Jersey City, June 10, 1871. The defendant had already proved that the Book of Minutes was lost. The plaintiff offered in evidence a copy of the proceedings of the meeting, certified by the Secretary of the Company (Case, p. 68). The defendant objected to the admissibility of this copy, and the Court excluded the evidence (Case, p. 69, l. 1-3).

This ruling was erroneous. The recording officer of a corporation may make and verify copies of its records and of the verity of such copies his certificates are evidence.

Angell & Ames Corp., § 515.

Oakes v. Hill, 14 Pick., 442.

But it was in the defendant's favor, and clearly the defendant, having caused the certified copy to be excluded, could not afterwards object to proof of what took place at the meeting, by the evidence of a witness who was present at it. It having appeared that the meeting took place in Jersey City, and was a meeting of the Trustees of the defendant, it surely could not be important to give further proof as to the legality of the meeting. The exceptions referred to are therefore not well taken.

TWELFTH.

It was unnecessary to prove an actual ouster. The Statute on this subject is express: "The plea of the defendant shall for the purposes of that action be an admission that he was in possession of the premises for which he defends, or that he claimed title thereto at the time of commencing the action."

Revision N. J., p. 327, § 13.

THIRTEENTH.

The judgment in favor of Clara Buckmaster should be affirmed with costs.

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Of Counsel.

New Jersey Court of Errors and Appeals.

NEW YORK BAY CEMETERY COMPANY,

vs.

CLARA BUCKMASTER.

Ejectment.
Error to Supreme Court.

BRIEF.

I.

None of the deeds through which plaintiff below claims convey such an interest as will support the action.

The interest conveyed is simply a right of burial, an incorporeal hereditament, to be held by the purchaser, his heirs and assigns.

The interest emanates from a corporation specially chartered, and the interests granted by such corporation must be in accordance with the powers given to the corporation and in subservience to the limitations in the charter. Every purchaser takes subject to the limitations in the charter as well as those in his deed.

The power of the corporation as limited by the act of incorporation is to vest in the purchaser and his heirs the right of burial in the lot purchased subject to the management and possession by the corporation of the whole cemetery and each lot thereof, for the purposes particularly mentioned in the act—and subject to such rules and regulations as the company might adopt consistent with the purposes of the act of incorporation.

The act of incorporation is found in Laws of 1850, page 194, etc.

The 2d section authorizes the corporation to take and hold in fee a certain tract described, and to hold such tract or tracts of land for the uses therein-after mentioned.

Subdivision I of said section authorizes the corporation to sell or otherwise dispose of the sublots, and also to erect such buildings and accommodations as they should deem suitable.

Subdivision II of section 2 is as follows :

“The sublots shall be conveyed to the respective purchasers thereof when paid for in full in fee, by deed under the corporate seal of said corporation, and signed by the secretary thereof, to be occupied only as burial places for deceased human beings, with the uses and privileges of the several avenues, walks and chapels in said cemetery, subject to such regulations as have been or may be established by said association in relation to the same.”

Subdivision III of section 2 provides that the care and management of the said cemetery shall be confided to the incorporators and their successors, who “shall have the exclusive superintendence thereof, with power to appoint and employ such officers and agents as they may deem expedient ; to fix their compensation ; to cause the grounds, graves,

walks and improvements to be kept in good order, and generally to do all such other things for the interest of the said corporation and lot-holders as may be proper in the premises."

Section 5 of the act is, "That it shall be the duty of said company to cause the said cemetery to be enclosed by a good substantial and neat enclosure and at all times to keep such enclosure in good order and repair and to keep and maintain the grounds in a cleanly and neat condition under the penalty of one hundred dollars for every thirty days said company shall fail to comply with either of the requirements, to be sued for, recovered and applied as mentioned in the succeeding section."

Section 6, "under penalty of \$100 for every offence imposes upon the corporation the prevention of burial of certain classes of persons within the cemetery."

Section 8 is, "That the legislature may any time hereafter make and prescribe such regulations and rules touching the use of the grounds of said cemetery as the public good may in the opinion of the legislature require."

All the deeds in plaintiff's claim of title have habendum as follows: "To have and to hold the hereinabove granted premises to the said his heirs and assigns forever *for the uses of sepulture only and to or for no other uses whatever, subject however to the conditions and limitations and with the privileges specified in the rules and regulations now made or that may hereafter be made and adopted by the managers of the said cemetery for the government of the lot holders and visitors to the same.*"

By the rules and regulations of the Company (pages 105 to 111 of case), the Company have full control of, entrance to, and conduct within the cem-

etary; assessments are laid against each lot; lot owners cannot bury in lot if any charge be due or unpaid; no sale by original or subsequent owner good except entered on books of Company; all interments subject to scale of charges to be paid Secretary before interment made; all workmen upon lots, vaults, monuments subject to direction of Company; all excavations for vaults, monuments, &c., to be made by Company at expense of owner; no lot to be enclosed without permit from Company; all improvements to lots regulated by Company; Company reserve right of preventing or removing any erection or enclosure which they may consider injurious to locality and of removing or pruning any trees.

The possession demanded in this action is contrary to the purpose of the act, the limitations in the deeds, and the terms of the rules and regulations.

There is nothing in the pleadings to limit the character of possession to be obtained under the judgment. The declaration demands possession—general possession, which means exclusive possession. The same possession is demanded as would be demanded under a fee simple absolute in the lands. Such possession if obtained would be free from every limitation in the act, in the deed, or in the rules and regulations. Then every lot-holder might bring ejectment and strip his ownership of every limitation, and eventually the company would have no control, possession or management, and the purposes of the act would be defeated altogether.

The status of a lot holder under the general cemetery act of New York State, which in substance is the same as the provisions in the charter of this

company, is very clearly laid down in the case of *The Buffalo City Cemetery Association vs. The City of Buffalo*, 46 N. Y. 503.

The question came up there in determining the proper party to be assessed for street sidewalk.

Judge Folger says: "The effect of such conveyance under the statute from which the plaintiff derives its powers, is, we suppose (for no copy of any conveyance is laid before us) no more than to confer upon the holder of a lot a right to use for the purpose of interments. No such estate is granted as makes him an owner in such sense as to exclude the general proprietorship of the association. The association remains the owner in general and holds that relation to the public and to the government; while subject to this the individual has a right exclusive of any other person to bury upon the subdivided plat assigned to him. He holds a position analogous to that of a pew-holder in a house of public worship. It is a right exclusive of any other for the congregation but subject to the right of the religious corporation which represents the ownership of the property to the public and is the legal owner of the fee of the property."

In *Queen vs. St. Mary Abbots*, 12 Ad. & E. 824, the Justices express the same doctrine.

Littledale, Justice, says: "The act gives the company power to construct ^{vaults} walks and catacombs, which they may afterwards convey in perpetuity or otherwise. This power of disposing of the right of burial in perpetuity makes no difference in principle; they are still the occupiers of the whole cemetery. It does not appear that the owners of the vaults have the keys of the outer enclosure, though the company deliver them the keys of the vaults. The purchasers have nothing but a right to a certain mode of enjoying portions of the land from which the company derive a profit."

Justice Williams: "No doubt the company are in the occupation of the whole cemetery. They have the regulation and repair of it and the general superintendence over it; they have the control of the external entrance. * * * It is a fallacy to treat the conveyance here as a sale of the land. The company have no power to sell any but the surplus land not used for the cemetery. *By the grant they only part with the exclusive right of sepulture.*"

Justice Coleridge: "Section 4 gives the company a limited power of sale, and section 7 must be construed in conformity with that provision. The land appropriated for interment cannot be sold. The sales therefore made under section 43 convey only a peculiar easement and do not deprive the company of the general occupation of the whole."

To the same effect is *Queen vs. Abbey Park Cemetery Company*, 8 Law Rep. Queen's Bench, 515.

In *Presbyterian Church vs. Andrus*, 1 Zab. 325, Chief Justice Green in discussing the nature of the interest under a grant to one and his heirs and assigns forever of a pew in a church says: "The title of the pew-holder is usufructuary. He has strictly no title to the pew itself. He cannot treat it as his own property. He can use it only for the purposes to which it has been dedicated and in the mode prescribed or agreed upon at the time of the purchase. It is in reality a mere easement. A privilege or use in the freehold of another—still it is an hereditament, although incorporeal and as such when vested as in the present instance in the owner and in his heirs it is real estate, not personal."

Again the Chief Justice says in the same case :
 "But the exclusive right of occupying a particular seat or pew in a church is an incorporeal hereditament. It is in the nature of an easement ; a right or privilege in the lands of another. For an interruption of the right an action on the case for a disturbance as in other cases of injury to incorporeal hereditament is the only remedy."

To same effect see *Gay vs. Baker*, 17 Mass. 435, and *Daniel vs. Wood*, 1 Pick. 102.

In the case of *Big Mountain Improvement Company's Appeal*, 54 Penn. 361, it was held that a conveyance in fee simple of the whole of the surface right in a certain ten acres therein described, with the limitation "the surface right hereby granted shall not be deemed or taken to be a right granted to the said company for the purpose of laying out a town or building thereon, but only for the purpose of a coal breaker and dirt room for the deposit of coal dirt," granted an easement only for which ejectment would not lie.

The action of ejectment will not lie for an easement or any kind of an incorporeal hereditament.

Tyler on Ejectment, 41 ; *Farley vs. Craig*, 3 Green, 191 ; *Child vs. Chappell*, 9 N. Y. 246 ; 2 *Yeates*, 331 ; *Big M. Imp. Co's Appeal*, 54 Penn'a St. 361.

If the interest conveyed under the deeds be not sufficient to support this action of ejectment, then the 9th, 10th and 11th assignments of error under the exceptions sealed on page 72 of the case are sustained.

II.

The deeds in the claim of title of plaintiff below from 1 to 22, both inclusive, (pages 74 to 87 of case), were void as conveyances for indefiniteness in description of the estates or lands intended to be conveyed.

Shackleford vs. Bailly, 35 Ill. 387; Shoemaker vs. McMonigle, 86 Ind. 421; Moulton vs. Eggerly, 75 Me. 485; 3 Washb. on R. P. 398; Bernstein vs. Heims, 71 Ala. 260.

The description gave no dimensions of the lots, and nothing to indicate what part of the cemetery they are situated in. It is impossible to arrive at what particular lots were intended to be conveyed.

The deeds can therefore have no validity as conveyances in severalty.

They could not operate as conveyances of an undivided interest in common, as they give no indication of the size of the lots. The map in evidence shows the lots to be unequal in size. Did the deed conveying 5,000 lots include some small and some large ones, or were they all of same size? There is nothing by which to determine that, and consequently nothing by which to find the proportion of the undivided interest conveyed by any deed.

If this position be correct the eighth assignment of error under the exception stated on page 71 of case is sustained.

III.

The alleged confirmatory deed (No. 23) if its description be capable of being ascertained, with definiteness, can convey no other than an undivided one-ninth interest in the 30,000 lots to each of the nine grantees, and no claim is made that Thomas H. Buckmaster ever acquired interests in those proportions from them.

It could not confirm titles through deeds void for uncertainty of description. If it could confirm the interests previously pretended to be conveyed by deeds Nos. 1 to 22 it would still leave the same uncertainty about the size of lots intended in any one of those deeds and consequently the same uncertainty as to the amount or proportion of the undivided interest intended and the deeds would still be void as conveyances.

It in no sense confirms those conveyances as conveying interests in severalty, because it in no degree helps to make certain the particular lots referred to in any one of those deeds.

No evidence is in the case showing that there was only thirty thousand lots unsold or that there were thirty thousand lots unsold, and without such evidence the description of deed No. 23 cannot be made certain as to the lots in the cemetery to pass under it.

If either position taken under this head be correct the 8th and 11th errors assigned are sustained.

IV.

The interest conveyed to Samuel M. Woodruff whether by deed No. 9 or by the confirmatory deed (No. 23) has not been shown to have been conveyed to Thomas H. Buckmaster the testator of plaintiff below. A conveyance (No. 10) from Louisa M. Woodruff and Lockwood D. F. Woodruff to Thomas H. Buckmaster for 333 lots has been admitted in evidence, but no evidence has been offered in the case to prove the death of Samuel Woodruff or to prove that Louisa M. Woodruff and Lockwood D. F. Woodruff have the right to convey the interest conveyance to Samuel M. Woodruff.

Without that interest shown in Thomas H. Buckmaster, plaintiff below could not recover.

This point is covered by assignments of error 9, 10 and 11.

V.

There was error in directing a verdict for plaintiff below, because there was evidence that should have been submitted to the jury showing that the deeds to Lansing Zabriskie (Nos. 24 to 30) through which plaintiff below claimed, were not the deeds of the corporation.

It was not controverted that Zabriskie was merely the agent of Thomas H. Buckmaster, having no interest whatever, for himself. The deeds stand as if

made to Thomas Buckmaster to whom he afterwards conveyed all his interest under them. Buckmaster was the President of the Company, chargeable with knowledge of all irregularities in the meetings of the stockholders and of the trustees.

The evidence showed almost conclusively that the elections held by the stockholders for selection of the officers who executed these deeds were held in New York city, and also that the meetings of the directors who had to do with the execution of these deeds, were held in New York city. (See p. 104 of case. Buckmaster, 55; Pratt, p. 46 and 48, &c.)

All votes and proceedings of persons professing to act in the capacity of corporations when assembled beyond the bounds of the State granting the charter of the corporation, are wholly void.

Aug. & Ames of Corp., § 498 and 274; 27 Me. 509; 13 Peters, 519; 14 Peters, 129.

No case holds that such votes or proceedings would be valid as to a person chargeable with knowledge of the irregularity.

No claim was made for plaintiff below that any officers or the company concerned in the execution of these deeds were elected in New Jersey, or that any meeting of trustees at which action was taken in reference to the deeds, was held in New Jersey except that a special meeting of the trustees was held at the office of one the trustees in Jersey City, June 10th, 1871.

The only evidence of that meeting or what its action was is furnished in the testimony of George

Buckmaster (page 72, l. 1 to 15). He there says that the resolution adopted "did say that all the acts which had been done in the City of New York should be confirmed by the New York Bay Cemetery Company in Jersey City, at that meeting."

This meeting was of an illegally elected Board of Trustees. They could not as to Thomas H. Buckmaster confirm any acts of the company no matter where they met.

If they were legally elected trustees and met regularly they could not, by a resolution so uncertain in its application—so indefinite and general in its terms, confirm deeds executed by officers whose election was void and whose acts in the execution of the deeds were void.

No corporation can by a resolution of that general nature, which from its wording may apply to any past act whether of the most trifling or most solemn, confirm acts of such a nature as the execution of those deeds.

If it were so no director or trustee could tell what he was voting to confirm and the grossest frauds might be perpetrated.

VI.

There was error in the refusal to nonsuit and in direction of a verdict for plaintiff below because the lots conveyed by the second series of deeds (24 to 31) cannot from the evidence be ascertained and located.

The descriptions in all those deeds refer to certain lots by numbers in certain named blocks (as K. North, Q South) upon a certain map styled therein the Register map. The map offered in evidence

shows no blocks H. North, or Q South, or any other block named in the deeds, and does not purport to be the register map of the cemetery, and no evidence was offered to indicate that it was.

VII.

There was error in permitting the question to be answered by Kattenstroth, objected on page 20.

The deeds referred to a certain map. The thing to be ascertained was not how the lots and sections were identified on the ground, but how they ought to be identified as shown by the map.

The answer, however, was not important as the witness afterwards, page 21, l. 4 to 8, said there was no identification or marking on the ground, which showed the number or lettering of the sections.

VIII.

There was error in the Court permitting each of the questions of Kattenstroth, objected to on pages 21 and 22 to be answered.

The deeds referred to certain numbers upon certain named blocks as delineated and shown on a certain map. The witness had said there was no marking of the sections on the ground. The map referred to should have been produced as the best evidence. The map was the source from which the knowledge of the true location of the sections were determined.

IX.

For the same reasons there was error in the refusal of the Court to strike out the question and answers of Kattenstroth as requested, page 23.

X.

There was error in permitting the witness Buckmaster to answer the question, "State the substance of this resolution to which I called your attention."

The witness had not said he had any knowledge of the substance of the resolution, and if he had not he could not be permitted to guess at it.

XI.

There was error in admitting the first deed offered in evidence as it was not proved by a subscribing witness nor put within the provision of the 3d section of an act respecting conveyances.

The person executing the deed made the proof. There was no subscribing witness. It was claimed that the record could be offered in evidence because it had stood thirty years, but the corroboration required by the statute was not made.

The same infirmity attaches to Nos. 4, 7, 11, 12, 14, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29 and 30.

All of which were objected on the ground of the ~~con~~ conformity stated, and exception taken to the admission.

XII.

There was error in admitting the book offered on page 67.

It was not shown to be such a book as was entitled to speak for the company as to what lots had been sold or what remained unsold.

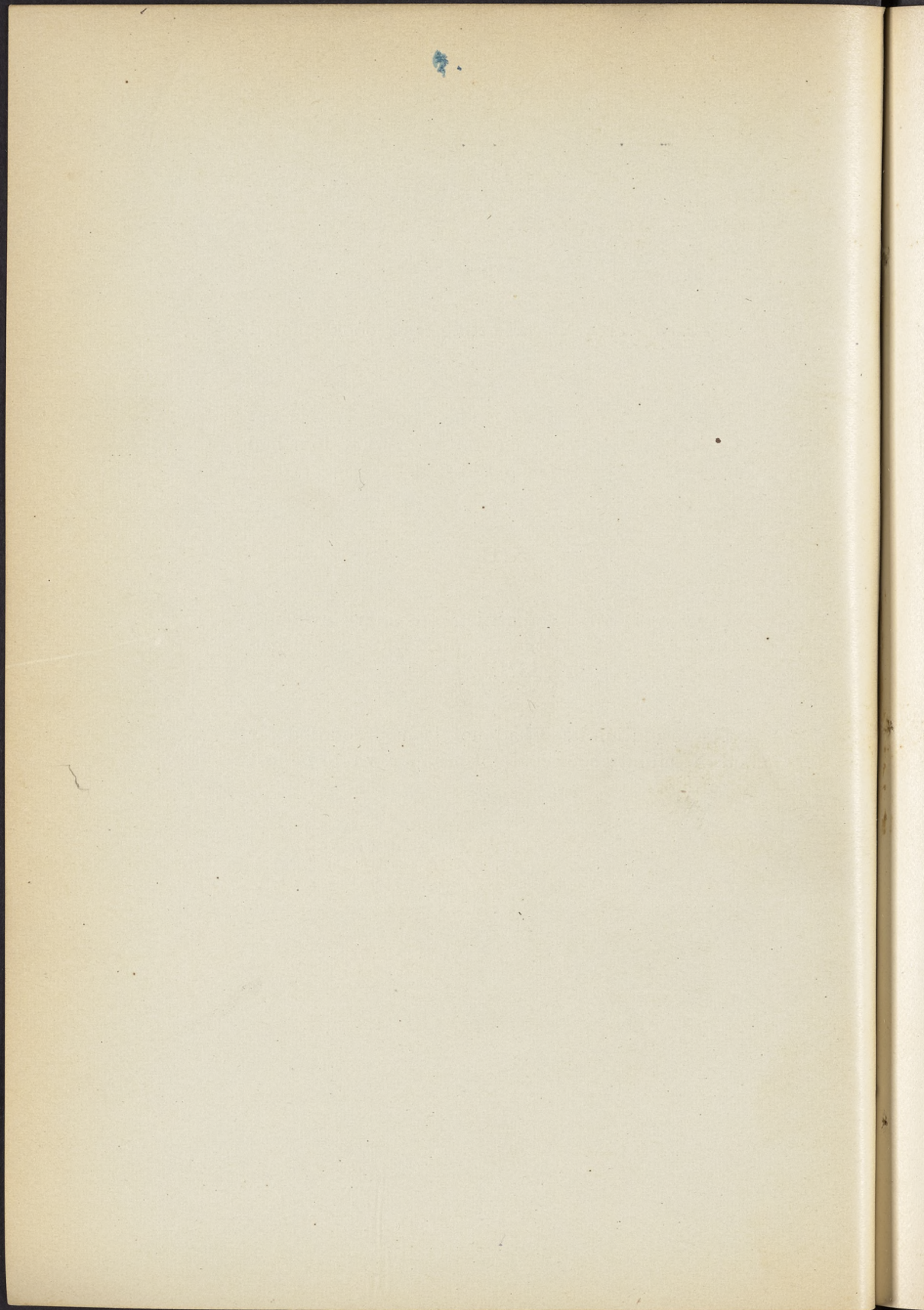
XIII.

There was error in admitting secondary evidence as to the contents of the resolution at the alleged meeting of June 10th, 1871.

The resolution itself had not been accounted for and the minute book had not been shown to be lost as to them.

Wm A Lewis

Atty of Plff in Error



N. J. Court of Errors and Appeals.

*NEW YORK BAY CEME-
TERY COMPANY,*

v.

CLARA BUCKMASTER,

*On Writ of
Error to Su-
preme Court. 10*
In Ejectment.

WRIT OF ERROR.

(Returnable June 3, 1886.)

NEW JERSEY, SS.

20

The State of New Jersey to the Chief
[L. S.] Justice and other Justices of our
Supreme Court of Judicature,
Greeting :

For as much as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, between Clara Buckmaster, plaintiff, and the New York Bay Cemetery Company, defendant, in a plea of ejectment, manifest error hath intervened, to the great damage of the said New York Bay Cemetery Company, as it is said; we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in

the last resort in all causes, at Trenton, on the third day of June next, together with this writ; that the record and proceedings aforesaid, being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and, according to the law and custom of the State of New Jersey ought to be done.

10 Witness, Honorable Theodore Runyon,
our Chancellor and President Judge of
our said Court of Errors and Appeals,
at Trenton aforesaid, the fourteenth day
of May, in the year of our Lord one
thousand eight hundred and eighty-six.

HENRY C. KELSEY,

WILLIAM A. LEWIS,
Attorney.

Clerk.

20

The answer of the Justices of the Supreme Court of New Jersey within named: The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals in a certain Schedule to this writ annexed, as within we are commanded.

M. BEASLEY, Ch. Jus.

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NEW JERSEY SUPREME COURT.

CLARA BUCKMASTER, vs. THE NEW YORK BAY CEMETERY COMPANY.	}	<i>In Ejectment.</i> <i>On Postea,</i> 10 <i>&c.</i>
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Talcott & Meyer,
Attorneys.

As yet of the twenty-sixth day of²⁰
 August, A. D. eighteen hundred
 and eighty-five.

Witness—

MERCER BEASLEY, Esquire,
Chief Justice.

BENJ. F. LEE, *Clerk.*

NEW JERSEY, ss.

30

Clara Buckmaster, the plaintiff in this action, by Talcott & Meyer, her attorneys, demands of the New York Bay Cemetery Company, the defendant therein, the possession of all those lots of land situate in the New York Bay Cemetery, in the City of Jersey City, in the County of Hudson and State of New Jersey, and which on the Register Map or plan of said Cemetery, are designated by the numbers sixty-four, sixty-five, sixty-six, sixty-seven, sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, seventy-three to sev-⁴⁰

enty-eight, both inclusive, eighty-three to eighty-six, both inclusive, and two hundred and seventy-three in Section J, North; lots numbered forty-five to fifty both inclusive, and twenty-one to twenty-four, both inclusive, in Section J, South; lots numbered two to six, both inclusive, and thirty-seven to forty-four, both inclusive, in Section I, North; lots numbered eight hundred and forty-seven, eight hundred and fifty, eight hundred and fifty-two, eight hundred and fifty-
 10 four to eight hundred and fifty-eight, both inclusive, eight hundred and sixty-three to eight hundred and sixty-nine, both inclusive, eight hundred and seventy-one, and six hundred and thirty-six and six hundred and sixty-eight in Section K, North; lots numbered three hundred and eight-six to four hundred, both inclusive, four hundred and three to four hundred and eight, both inclusive, four hundred and eighty-four, four hundred and eighty-six to four hundred and eighty-eight, both inclusive, four hundred and ninety,
 20 four hundred and ninty-two, and four hundred and ninety-four in Section L, North; and lot numbered seventy-two in Section Q, South.

And plaintiff says that her right to the possession of the same accrued on the thirteenth day of January, eighteen hundred and seventy-four, and that the defendant wrongfully deprives her of the possession thereof, to her damage five thousand dollars.

And the said New York Bay Cemetery Company,
 30 by William A. Lewis, its attorney, appears and defends this action, and says that it is not guilty of the injury wheroof the said Clara Buckmaster hath complained in her declaration, nor of any part thereof, and of this it puts itself upon the country, and the said Clara Buckmaster doth the like.

Therefore let a jury thereupon come before the Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court
 40 to be holden at Jersey City, in and for the County of

Hudson, on the first Tuesday of April, in the year of our Lord one thousand eight hundred and eighty-six, by whom, &c., and the same day is given to the parties aforesaid there, &c.

And now at this day, to wit, the twenty-eighth day of April, A. D. eighteen hundred and eighty-six, before our said Supreme Court at Trenton, comes the said plaintiff by her attorneys aforesaid, and the Justice before whom, &c., having sent hither his record¹⁰ had before him in these words, to wit:—

“Afterwards, that is to say, on the seventh day of April, in the year of our Lord one thousand eight hundred and eighty-six, at a Circuit Court held at Jersey City, in and for the County of Hudson, before the Honorable Manning M. Knapp, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, according to the form of the statute in such case made and provided, come as well the within named Clara Buckmaster, as the within named²⁰ The New York Bay Cemetery Company, by their attorneys within named, and the jurors of the jury being summoned to try the truth of the matters within contained, being elected, tried and duly sworn on their oath say, that the said The New York Bay Cemetery Company is guilty of the said trespass and ejection, above laid to its charge, in manner and form as the said Clara Buckmaster complained against it.

Therefore it is considered that the said plaintiff do³⁰ recover against the said defendant, her term yet to come, of and in the tenements aforesaid, with the appurtenances; and also forty-nine dollars and nine cents for her costs and charges by the said Court now here adjudged to the said plaintiff and with her assent.

And hereupon the said plaintiff prays the writ of the State of New Jersey, to be directed to the Sheriff of the County of Hudson aforesaid to cause her to have possession of her said term yet to come, of, in⁴⁰

and to the tenements aforesaid with the appurtenances, and it is granted to her, returnable, &c.

Judgment signed this twenty-eighth day of April, A. D. eighteen hundred and eighty-six.

M. BEASLEY,

Ch. Jus.

I, Benj. F. Lee, Clerk of the Supreme Court of the State of New Jersey, do hereby certify that the foregoing is a true copy of the judgment in the above stated cause as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and the seal of said Court at Trenton, this seventeenth day of May, A. D. eighteen hundred and eighty-six.

BENJ. F. LEE, Clk.

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NEW JERSEY SUPREME COURT.

HUDSON CIRCUIT, APRIL TERM, 1886.

CLARA BUCKMASTER,
 vs.
 THE NEW YORK BAY CEMETERY
 COMPANY.

In Ejectment 10

On this seventh day of April, A. D. eighteen hundred and eighty-six, this cause was moved for trial by the plaintiff, the defendant appearing, whereupon a jury was empannelled, evidence offered and proceedings had as follows :

Mr. Justice KNAPP presiding.

For plaintiff—TALCOTT & MEYER and Mr. EVERETT P. WHEELER of the New York Bar.

Mr. W. A. LEWIS and Mr. M. T. NEWBOLD for defendant.

Mr. WHEELER opens for plaintiff. 30

Plaintiff offers in evidence a deed from the New York Bay Cemetery Company to Thomas H. Buckmaster, dated September 27, 1853, proved October 3, 1853, recorded October 9, 1854, Lib. 42, p. 113, etc. Conveys 3333 lots of land in the New York Bay Cemetery in common, and undivided in all the lands as the same are laid out on the registered plan of the cemetery and now remaining unsold and belonging to the said cemetery company. 40

Mr. NEWBOLD. We object to the deed being received in evidence. That the description is so indefinite as to make the deed void, the lots referred to cannot be reduced to a certainty; it does not show which of the lots referred to, which part of the cemetery, which part of the whole plot, whether north, south, east or west part. It is void for uncertainty.

10

The COURT. Who were the parties in the partition proceedings?

Mr. WHEELER. The heirs and devisees of Thomas H. Buckmaster.

Mr. NEWBOLD. We were not made parties at all.

Mr. WHEELER. You could not be.

20

Mr. NEWBOLD. The Court will see that no surveyor could locate these three thousand three hundred lots named in these deeds. It could not amount to a conveyance of an undivided interest. There is nothing to show the size of the lots, or whether they were of the same size or different sizes.

The COURT. How do plaintiffs assert the fact be as to the size of the lots?

Mr. TALCOTT. The deed specifies so many lots as laid out on the map of the cemetery, which was on file in the Clerk's office of this county.

30

Mr. WHEELER. They did vary in size, and there were thirty thousand of them altogether.

The COURT. Then it could not be $\frac{3,333}{3,000}$ of the land.

Mr. TALCOTT. I understand they are all 8 x 10?

40

Mr. WHEELER. It is not very material, for this reason: we get deeds to the whole 30,000, this is only one of the series of deeds the effect of which is to convey to Mr. Buckmaster titles to the entire 30,000 and I suppose the deeds must be taken together. There are

deeds subsequent curing and designed to cure this and referring to this. I hold a deed in my hand which will be offered later, which expressly recites the previous grants and conveys to these parties the entire 30,000 lots as described in the map, but we supposed it was necessary to put these preliminary deeds in evidence taken in connection with the subsequent deed of confirmation. It is merely a question of order of proof. 10

The COURT. On the statement of counsel, I will admit the deed in evidence now, and defendant may make objection after the whole title is put in. It is now merely a matter of order of proof. It may come in subject to ultimate ruling upon its effect.

Mr. NEWBOLD. We make further objection that a necessary part of this deed, namely, the rules and regulations of the cemetery company are not here, and unless they are produced the deed cannot be evidence without them. We make the further objection that there is no subscribing witness. It is not set forth in substance that it was signed, sealed and delivered as a voluntary act and deed of the corporation. 20

Mr. WHEELER. Over twenty years have passed and the deed is recorded. We offer in evidence the record of the deed.

The COURT. The deed will be admitted in evidence now, subject to further ruling, and if it is finally admitted, defendant may have exception. 30

Plaintiff offers in evidence a deed from the New York Bay Cemetery Company to Thomas H. Buckmaster, dated October 19, 1853, acknowledged October 7, 1854, recorded October 9, 1854, Lib. 42, p. 115, etc. The deed is in 40

every way similar to the former deed, except that it conveys 5737 lots in the same language.

Defendant objects to the admission of this deed in evidence on the same grounds as the last deed, and if ultimately admitted in evidence prays exception.

10 Plaintiff offers in evidence a deed from the New York Bay Cemetery Company to Thomas H. Buckmaster, dated November 9, 1853, acknowledged October 7, 1854, recorded Lib. 42, p. 117, etc., October 9, 1855. Conveys 9785 lots in the same form.

Same objection and ruling.

20 Plaintiff offers in evidence a deed from the New York Bay Cemetery Company to William Rider, dated September 27, 1853, proved October 3, 1853, recorded October 9, 1854, Lib. 42, p. 142, etc. Conveys 4000 lots, in the same language.

Same objection and ruling,

30 Plaintiff offers in evidence deed from William Rider and wife to William S. Nichols, dated April 10, 1854, acknowledged April 11, 1854, recorded October 9, 1854. Conveys the same 4000 lots as by the last deed, by the same form of description.

Defendant objects to this deed for the same reasons as the former deeds, and offers another objection as to whether any of these deeds convey such an interest as will maintain the action of ejectment.

Ruling reserved until the plaintiff has put in all his title.

40 Deed from William S. Nichols to Thomas H. Buckmaster, dated September 28, 1854, ac-

knowledgeed September 29, 1854, recorded October 9, 1854, Lib. 42, p. 125, etc. Conveys same 4000 lots as last referred to.

Same objection and ruling.

Deed from New York Bay Cemetery Company to Daniel D. Schenck, dated October 8, 1853. This is a certified copy from the records, certified by Robert Gilchrist, clerk, proved October 8, 1853; recorded February 2, 1854. Conveys 120 lots, the same description.

Same objection and ruling.

Deed from Daniel S. Schenck to Thomas H. Buckmaster, dated September 28, 1854, acknowledged October 4, 1854, recorded October 9, 1854, Book 42, p. 119, etc. Conveys 120 lots same as last deed.

Same objection and ruling.

Deed from New York Bay Cemetery Company²⁰ to Samuel M. Woodruff, dated February 23, 1853, proved October 7, 1854, recorded October 9, 1854, Lib. 42, p. 131, etc. Conveys 333 lots.

Same objection and ruling.

Deed from Louisa D. Woodruff and Lockwood D. F. Woodruff, the widow and only child and heir-at-law of Samuel M. Woodruff, deceased, to Thomas H. Buckmaster, dated³⁰ June 21, 1860, acknowledged June 21, 1860, recorded September 12, 1860, Lib. 83, p. 29, etc. Conveys the same 333 lots as conveyed by last deed.

Same objection and ruling.

Deed from New York Bay Cemetery Company to C. N. S. Rowland, dated October 14, 1853, proved October 14, 1853, recorded Octo-

ber 9, 1854, Lib. 42, p. 136, etc. Conveys 500 lots of the 30,000 lots.

Same objection and ruling.

Deed from the same to the same, dated September 27, 1853, proved October 1, 1853, recorded October 9, 1854, Lib. 42, p. 138, etc. Conveys 834 lots of the 30,000.

10

Same objection and ruling.

Deed from Charles N. S. Rowland to Thomas H. Buckmaster, dated September 28, 1854, acknowledged September 30, 1854, recorded October 9, 1854, Lib. 44, p. 126, etc. Conveys 1234, being the same lots conveyed by the last two deeds.

Same objection and ruling.

20

Deed from the New York Bay Cemetery Company to Edward S. Innes, dated October 1, 1853, proved October 1, 1853, recorded October 9, 1854, Lib. 44, p. 139, etc. Conveys 500 lots, part of the 30,000.

Same objection and ruling.

30

Deed from Edward S. Innes to Thomas H. Buckmaster, dated September 28, 1854, acknowledged September 30, 1854, recorded October 9, 1854, Lib. 44, p. 123. Conveys the same 500 lots as conveyed by the last deed.

Same objection and ruling.

Deed from New York Bay Cemetery Company, to James G. Miner, dated November, 3, 1853, proved October 7, 1854, recorded October 9, 1854, Lib. 42, p. 129, etc. Conveys 712 lots of the 30,000.

Same objection and ruling.

40

Deed from James G. Miner to Thomas H. Buckmaster, dated September 28, 1854, acknowledged same date, recorded October 9,

1854, Lib. 42, p. 120, etc. Conveys the same 712 lots of the 30,000 as conveyed by the last deed.

Same objection and ruling.

Deed from the New York Bay Cemetery Company to William H. Leonard, dated September 27, 1853, proved October 3, 1853, recorded October 9, 1854, Lib. 42, p. 141, etc. Conveys 333 lots, part of the 30,000. 10

Same objection and ruling.

Deed from William H. Leonard to Thomas H. Buckmaster, dated September 28, 1854, acknowledged October 5, 1854, recorded October 9, 1854, in Lib. 42, p. 126, etc. Conveys the same 333 lots as by last deed.

Same objection and ruling.

Deed from New York Bay Cemetery Company to Ethelbert R. Billings, dated October 17, 1853, proved same date, recorded October 9, 1854, Lib. 42, p. 135, etc. Conveys 3000 lots of the 30,000. 20

Same objection and ruling.

Deed from New York Bay Cemetery Company to Ethelbert R. Billings, dated October 7, 1853, proved October 12, 1853, recorded October 9, 1854, Lib. 42, p. 133, etc. Conveys 813 lots of the 30,000. 30

Same objection and ruling.

Deed from Ethelbert R. Billings to Thomas H. Buckmaster, dated September 28, 1854, acknowledged same date, recorded October 9, 1854, Liber 42, p. 127, etc. Conveys 3813, being the same lots conveyed to Billings by the last two deeds.

Same objections and ruling.

Also deed from New York Bay Cemetery 40

Company to Thomas H. Buckmaster, William S. Nichols, Ethelbert R. Billings, William H. Leonard, Samuel M. Woodruff, Edward S. Innis, Charles N. S. Rowland, James G. Miner and Daniel S. Schenck, dated September 26, 1854, proved September 28, 1854, recorded October 9, 1854, Lib. 42, p. 144, etc. Conveys 30,000 lots, being all the lots remaining unsold and being in confirmation of all the deeds heretofore offered in evidence.

10

Same objections and ruling.

Deed from New York Bay Cemetery Company to Lansing Zabriskie, dated January 2, 1871, proved same date, recorded July 20, 1871, Lib. 231, p. 34, etc. Conveys lots 11 to 32 inclusive, 51 to 73 inclusive, 75, 91 to 102, 139 to 142 both inclusive, 187 to 190 both inclusive, 179 to 182 both inclusive, 175 to 177 both inclusive, 265, 305 in Section Q, South, between Acacia and Laurel avenues, as laid down on the registered map or plan of the said cemetery.

20

Defendant objects to this deed on the ground that it is not proved by subscribing witness; it is not shown that the deed was signed and sealed and delivered as a voluntary act and deed of the New York Bay Cemetery Company; that it is not a sufficient proof under the statute. It is signed by George Buckmaster, Secretary, George Buckmaster, Register *pro tem*. The form of the acknowledgement is defective. It does not show who was ordered or who had authority to affix the seal of corporation to the deed.

30

Plaintiff offers in evidence a deed from the New York Bay Cemetery Company to Lansing Zabriskie, dated January 2, 1871, proved same date, recorded August 9, 1872, Lib. 245, p. 331, etc. Conveys lot 1 to 36, 47 to 52, 208, 353,

40

354, 487, 492, 526, 527, 539, 541, 582, 587, 644, 646, 648, 659, 661, 660, 668, 700, 725, 726, 729, 730, 738, 741 to 744, all inclusive, where they are "from, to," in Section K, North, between Hawthorne and Cypress avenues as laid down on the map of the cemetery.

Defendant objects to this deed as not proved by subscribing witness; not shown to be executed by the company as its voluntary act¹⁰ and deed; it is not shown that it was executed by authority of the company, and also that the rules and regulations referred to are not produced.

Plaintiff offers in evidence deed from the New York Bay Cemetery Company to Lansing Zabriskie, dated January 2, 1871, proved January 2, 1871, recorded June 17, 1872, Lib. 244, p. Conveys lots 323 to 360, 363 to 400,²⁰ 403 to 440, 443 to 480, 483 to 520, 523 to 560, 563 to 600, 603 to 640, 643 to 680, 683 to 714, 716 to 720, 723 to 743, all inclusive, in Section L, North, between Linden and Myrtle avenues as laid down on the map or plan of the cemetery.

Same objections as to last deed.

Plaintiff offers in evidence deed from the same to the same, dated January 2, 1871,³⁰ proved same date, recorded August 9, 1872, Lib. 245, p. 230. Conveys lots 746, 755 to 758, 761, 763, 764, 774, 775, 823, 825 to 838, 841 to 845, 847, 850, 852, 854 to 858, 863 to 867, 868, 869, 871, 873, 875, 877, 636, 696, 816, all inclusive in K, North, between Hawthorne and Cypress avenues on the map or plan of the cemetery. Wherever it is "from, to," both numbers are inclusive.

Same objections.

10 Plaintiff offers in evidence deed from the same to the same, same date, proved same date, recorded August 9, 1872, Lib. 245, p. 240, etc. Conveys lots 2 to 6, 37 to 40, 41 to 46, 57, 58, 69 to 80, 97, 107 to 120, 126, 137 to 142, 144 to 155, 159, 165. 166, 183, 177, 178, 204 to 206, 207 to 212, 217, 218, 224, 243, 244 in Section I, North, between and avenues, as laid down on the map and plan of the cemetery.

Same objections.

Plaintiff offers in evidence deed from the same to the same, same date, proved same date, recorded August 9, 1872, Lib. 245, p. 233. Conveys lots 11 to 38, 43 to 78, 83 to 118 in Section J, South.

Same objections.

20 Plaintiff offers deed from the same to the same, same date, proved same date, recorded same date, Lib. 245, p. 235, etc. Conveys lots 3 to 38, 43 to 78, 83 to 118, 288, 273, 274, 326, 333, 336 to 368, 386, 403 to 408, 419, 443 to 448, 445, 451, 475, 476, 505 to 508, 514, 551, 552 in Section J, North.

Same objections.

30 Plaintiff offers in evidence a deed from Lausing Zabriskie to Thomas H. Buckmaster, dated June 22, 1871, acknowledged June 31, 1871, recorded Lib. 403,—it is an ancient deed filed June 9, 1885; it conveys 1411 lots by the same description as in the last deed by specific numbers; it conveys all the lots in the deeds to Zabriskie.

The same objections as heretofore, and also that it is a mere bargain and sale conveyance.

40 Plaintiff offers in evidence the last will and testament of Thomas H. Buckmaster dated

December 9, 1871, a certified copy from the Surrogate of Union county.

(Reads the first and last clause of the will)

Plaintiff offers in evidence an exemplified copy of the final decree in the Court of Chancery, in this State, wherein John W. Buckmaster and wife were complainants, and James Buckmaster and others, defendants; decree dated January 13, 1885. 10

Mr. WHEELER. The lots in our declaration and the lots assigned to Clara Buckmaster in the decree of partition are the same.

Mr. NEWBOLD. How many lots do you claim?

Mr. WHEELER. Ninety-five.

GEORGE BUCKMASTER, sworn on part of plaintiff, 20
testifies as follows:

Direct examination:

I reside at Elizabeth, N. J.; I am a son of Thomas H. Buckmaster, deceased; my mother is dead, she died May 14, 1883. I know Clara Buckmaster, the plaintiff; she is my sister, a daughter of Thomas H. Buckmaster. My father died in 1873.

Cross examined:

Q. At that time where was his office? 30

A. I think it was 195 Broadway; it had been there for a good many years, I couldn't say how many.

Plaintiff objects to this, as not a proper subject matter of cross-examination.

Defendant asks it for the purpose of identifying the witness as the son of the party who is connected with the title to these lots in suit.

Q. Where was the office of the Thomas H. Buck-40
master you refer to in 1873.

A. 195 Broadway. It had been there quite a number of years, I can't tell how long. Previous to that I think it was 102 Broadway; I was a mere boy then. Previous to that I can't tell where it was.

Q. Do you remember when it was at No. 5 Dey street?

A. I don't think he was living when they moved to No. 5 Dey street.

10 Q. Was this Thomas H. Buckmaster you refer to the man who was one of the trustees of the New York Bay Cemetery Company?

A. Yes, he was.

Q. In 1871 was he?

A. Yes.

Q. In 1870?

A. Yes.

Q. And in 1872?

A. Yes, I think so.

20 Q. Was Lansing Zabriskie also one of the trustees in 1870, 1871, 1872?

A. Yes, I think so.

Plaintiff rests.

30 The COURT. Is the map of the grounds of the cemetery essential for any purpose in the case? It is not in evidence.

Mr. TALCOTT. It is not in evidence. There is a block map filed but not a lot map. The defendant has the only map.

The COURT. Plaintiff may call upon the other side to produce it if they want it.

Mr. TALCOTT. We do not desire it.

40 The defendant moves that the plaintiff be non-

suitied and for the reasons following, to wit:

FIRST. Because of the indefiniteness of the description and location of the premises in which it is claimed her interest has been shown.

SECOND. Because the interest shown in the plaintiff is not such as that an action of ejectment will lie therefor;

THIRD. That title has not been shown in¹⁰ the plaintiff to the lots describe in the declaration.

FOURTH. That there is nothing in the case to show where these lots are, or where this land lies.

FIFTH. That the rules and regulations of the Company not being in the case, that proper and legal construction cannot be given to the deeds offered in evidence by the plaintiff.

And now the defendant renews the objections²⁰ to the admissibility of the deeds offered in evidence by the plaintiff at the time they were offered and asks that they be not received in evidence under the reserved ruling of the Court at the time they were offered.

The Court will hold these questions for the present and require the defendant to put in its evidence, and will rule upon them later. 30

MR. WHEELER. We would like to identify the lots laid in the declaration with the lots in the older deeds.

THE COURT. You must identify your property.

MR. WHEELER to Mr. NEWBOLD. Is the map in Court?

MR. NEWBOLD. We have no possession of the map. 40

AUGUSTUS M. KATTENSTROTH, sworn on the part of the *plaintiff* testifies as follows :

Direct examination by Mr. WHEELER:

Q. What is your business?

A. Superintendent of the Bay View Cemetery.

10 Q. What cemetery were you formerly Superintendent of?

A. The New York Bay of Greenville.

Q. How long were you superintendent of the New York Bay Cemetery ?

A. About seven years; I ceased to be superintendent of that cemetery on June 30th last.

Q. Whereabouts is that cemetery ?

A. Jersey City, that part which was formerly Greenville.

20 Q. How is that divided ?

A. Into sections.

Q. How are these sections marked or identified as sections on the ground?

The defendant objects to the question; that the location of these lots is by a map.

Mr. WHEELER. We are now proving the physical condition of the land and not the map.

30

The Court admits the question; to which admission and ruling the defendant prays a bill or exceptions may be allowed, and it is allowed and signed and sealed accordingly.

M. M. KNAPP, [L. s.]

J. S. C.

A. The sections are surrounded by avenues and the avenues are named.

40 Q. Are there any signs up which show what avenue is Acacia, and which is Laurel avenue for example?

A. Yes, there are signs on each avenue showing the name of the avenue, as well as numbers on certain lots.

Q. Is there any identification of or marking on the ground which shows the number or lettering of the section?

A. No, sir.

Q. Is there any identification or marking on the lots which shows the number of the lots?

A. Every fortieth lot is marked in each section. 10

Q. What is the mark?

A. The number of the lot. Each section contains about 840 lots; they are numbered by themselves from 1 up to 840.

Q. How are the sections designated?

A. We had sectional maps in the cemetery office.

Q. That is, when you ceased to be Superintendent of the New York Bay Cemetery there were maps of each section in the office of the cemetery?

A. Most of the sections. There was a map of I²⁰ North, K North, L North, N North, D North, M South, O South, Q South, M North.

Q. Besides these sectional maps was there any large map of the cemetery in the office of the company which showed the avenues and sections?

A. Yes, one map covering the whole original New York Bay Cemetery.

Q. Look at the deed I now show you (No. 24), being a deed from the New York Bay Cemetery Com-³⁰pany to Lansing Zabriskie of 75 lots Section Q South, and state whether you can take that deed and go to the New York Bay Cemetery and locate those lots?

Defendant objects to the question. That the location of these lots must be by the map, that that is the best evidenee.

The Court permits the question to be asked; to which admission and ruling, defendant⁴⁰ prays a bill of exeptions may be allowed and

it is allowed, and signed and sealed accordingly.

M. M. KNAPP, [L. s.]
J. S. C.

A. Yes, sir.

Q. Do you know yourself the lettering of these different sections in that cemetery?

A. Yes.

10 Q. Look at the other deeds I show you from the New York Bay Cemetery Co. to Lansing Zabriskie which are in evidence and numbered 25 to 30 both inclusive, being conveyances of lots in Section L North, K North, I North, J South, J North, and state whether you could take those deeds and go to the New York Bay Cemetery and locate those lots by the description in the deeds.

Same objection, ruling and exception

20 A. Yes, sir.

Q. Have you ever examined that cemetery and the lots in it in order to ascertain which the 30,000 lots were that are described in the deed from the New York Bay Cemetery Company to Billings and others, which is in evidence and marked No. 23, and which refers to thirty thousand lots remaining unsold at the time of said deed, and also for the purpose of ascertaining whether the lots that are described in these deeds to Lansing Zabriskie which I
30 have just shown you, were a part of the thirty thousand lots mentioned in the deed to Billings and others?

The defendant objects to the question, as not being competent evidence under the circumstances.

The Court admits the question, to which admission and ruling the defendant prays a bill of exceptions may be allowed and it is allowed and signed and sealed accordingly.

40 A. No, sir, I have never made that examination.

[L. s.]

Mr. WHEELER calls upon the other side to produce the map which is referred to in the declaration.

Mr. NEWBOLD for defense replies "We have no map here of the cemetery. We will produce what we have tomorrow morning"

Q. By the COURT. Is your information in respect to the division of the cemetery ground derived from the map and is it in accord with the map? 10

A. Yes, from the map and experience.

Q. By the COURT. Your experience is in accord with the map?

A. Yes, sir. My observation is in accord with the map.

Cross-examination by Mr. NEWBOLD :

Q. Your information has been derived from the map?

A. Yes, when I went there I had no knowledge²⁰ of the location of the different lots; whatever knowledge I got was from consulting the maps and the assistance of my foreman on the grounds.

Q. By a JUROR. Does this company keep books?

A. Yes.

Q. By a JUROR. And in the books if anybody is buried there they can be found out?

A. Yes.

Defendant asks that the answers of the witness³⁰ to questions which were objected to, be at this time over-ruled and stricken from the record.

The Court refuses to so direct, to which refusal defendant prays a bill of exceptions may be allowed, and it is allowed, and signed and sealed accordingly.

M. M. KNAPP, [L. s.]

J. S. C. 40

GEORGE BUCKMASTER recalled on the part of the *plaintiff* testifies as follows :

Q. Can you tell me who it was that located the lots which are described in the seven deeds from the New York Bay Cemetery Company to Lansing Zab-riskie, which are in evidence and marked from 24 to
10 30 both inclusive ?

A. I did.

Q. What do you mean by locating lots; what did you understand me to mean by my question?

A. That these lots were located and deeds made out from the record book.

Q. What book, if any, was in possession of the company, the defendant in this action, at the time those deeds were executed which showed anything in regard to the previous sales of lots ?

20 A. There was a regular record book kept, and when a party buys a lot his name is registered on it, opposite the number of his lot and section.

Q. State whether or not you examined that book before selecting the numbers of the lots that were to be stated in these seven deeds I have just shown you ?

Defendant objects to the question;

30 Mr. WHEELER. We give notice to the defendant to produce the transfer book which this witness shows was in their possession.

The WITNESS. The Record Book, I think it was called. The book in which the entries were made of the sales, they are in sections. Each section is lettered at the head of the book and the lots run down the page and opposite each lot number is the man's name.

40 Mr. WHEELER. We now give notice to the other side to produce that book.

Mr. NEWBOLD. We will produce anything we have.

Plaintiff rests subject to the right to put in the map and book called for when produced.

Mr. Newbold on the part of the defendant, renews his motion to non-suit, upon all of the grounds heretofore stated.

Adjourned for the day.

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SECOND DAY'S PROCEEDINGS.

TUESDAY, APRIL 8, 1886.

Plaintiff offers in evidence the map which has been produced by defendants in response²⁰ to the call of yesterday.

Mr. NEWBOLD. We also produce the books called for.

The COURT. They may be considered as in evidence and counsel can refer to them as they desire.

Mr. NEWBOLD. We do not put them in evidence. We bring them upon call of the other side. We now ask the other side what they claim for the map and these books as in evi-³⁰ dence.

Mr. WHEELER. We claim for the maps that the description and exact location of each of the lots described in the deeds is now in evidence by the map. As to the books we claim they show just what lots were sold and what were unsold, and they show that the lots described in the deeds from Zabriskie to Buckmaster were those that were unsold; that is that they were a part of the thirty thousand⁴⁰ lots.

The COURT. You claim that the books show, that in the property conveyed is not included anything that was conveyed by Mr. Zabriskie to Buckmaster and by partition assigned to this plaintiff.

Mr. WHEELER. Yes, sir.

10 Mr. Newbold on the part of the defendant now that the plaintiff has rested with all the evidence in, renews his motion to non-suit, on the grounds.

FIRST. That the evidence does not indicate with sufficient certainty the premises to which the plaintiff has shown her interest.

SECOND. Because the interest shown in the plaintiff is not sufficient to maintain the action of ejectment.

20 THIRD. Because the plaintiff has shown no ouster.

FOURTH. Because all the deeds offered in evidence previous to the Zabriskie deed, excepting the deed to the nine grantees, are void for uncertainty of description, and no part of the interest conveyed by the deed to the nine grantees has ever been legally vested in the plaintiff.

30 FIFTH. Because the plaintiff has not made out a case, and in connection with that, and which should properly precede the motion to non-suit, I move to strike out all the deeds referring to the rules and regulations of the cemetery, because the plaintiff has not produced the rules or regulations, nor accounted for their non-production, nor shown that there were none. I make this last motion as having been made previous to the motion to non-suit.

40 The Court holds these questions until the close of the case requiring the defendant to put in its defence.

MR. LEWIS OPENS FOR DEFENDANT.

LANSING ZABRISKIE, sworn on the part of the defendant, testifies as follows :

Direct examination by Mr. NEWBOLD :

Q. You are mentioned as grantee in seven deeds¹⁰ which have been offered in evidence in this case, and the New York Bay Cemetery Company as grantor. Are you aware of such deeds having been executed ?

A. No, I don't recollect them now.

Q. Did you ever pay any consideration to the New York Bay Cemetery Company for those deeds ?

Question objected to by plaintiff.

Defendant wants to show that the witness never paid consideration for the deeds. This company is incorporated by a special act and²⁰ by that act there is a limit to the power of the company.

The COURT. The testimony may be taken subject to objection and further ruling if necessary.

A. No, I never paid anything.

Q. Never paid a dollar consideration ?

A. No.

Q. Did you have any interest in any of those³⁰ deeds ?

A. No.

Q. Do you know how your name came to be used ?

A. No, I do not.

Q. Whether Mr. Buckmaster got you to do it ?

A. Thomas H. Buckmaster was a client of mine and I did it for his convenience, I suppose, took the title, merely as a matter of form.

Q. Merely as a conduit through which the title⁴⁰ could be vested ?

A. I suppose so.

Cross-examination :

Q. What consideration Mr Buckmaster paid, that you don't know ?

A. No.

Q. By Mr. NEWBOLD, He never paid any consideration to you for the deeds you made to him ?

A. No.

Q. By Mr. WHEELER. What the nature of the trans-
10 action between him and the company was, that you don't know ?

A. No, sir.

Q. For aught you know he may have paid them \$25 a lot ?

A. Yes, he may for all I know.

Defendant offers in evidence, Pam. L. 1850, p. 194, etc. An Act to incorporate the New York Bay Cemetery Association.

26

Also offers in evidence, record of a deed, from Benjamin H. Broomhead, to the New York Bay Cemetery Company, dated August 30, 1850, acknowledged August 30, 1850, recorded October 3, 1850, Lib. 17, p. 259, etc. Conveys a tract of 100 acres of land more or less, and comprises by-laws which are a part of it, and recorded with it.

30

Plaintiff objects to the deed as immaterial ; that any conditions in the deed could only be taken advantage of by Broomhead and his heirs and if Broomhead himself could have taken advantage of breach of conditions the statute had run against him long since. There was a mortgage on the property.

The object of this conditions was to secure the mortgagee, the original grantor, and he provided that no lots should be sold, except for a certain price.

40

Such limitation cannot be binding upon the corporation forever especially after the mortgage was paid, which it has been.

Mr. NEWBOLD. We claim that the limitations in this deed are notice to subsequent purchasers. We desire to show that the New York Bay Cemetery Company got title to this property subject to these conditions, and that their by-laws, rules and regulations are contained in that deed, and every one of the deeds which the plaintiff has offered in evidence has referred to the rules and regulations of the company now made.¹⁰

The COURT. As I understand the point made, it is that it is not necessary to the title of the defendant, your title being admitted, and the plaintiff claiming through you that the conditions and covenants in that deed are not such as can avail here against these parties.²⁰ If the grantor or his heirs saw fit not to assert any rights under them, the grantee certainly cannot. If you wish the deed in merely for reference it may stand subject to the objection which I think is well taken.

Defendant offers in evidence Pam. L. 1854, p. 516, a further supplement to An Act to incorporate the New York Bay Cemetery Association, approved March 5, 1850.³⁰

Mr. WHEELER. That authorizes a sale without restrictions.

Defendant offers in evidence Pam. L, 1878, p. 256. That provides for calling a meeting for the election of trustees.

Defendant offers in evidence the laws of 1881 in regard to the limitation of the number of votes which any lot owner may have.⁴⁰

HENRY STEFFENS, sworn on the part of the defendant testifies as follows :

Direct examination by Mr. NEWBOLD :

I am president of the Board of Trustees of New York Bay Cemetery Company. I was made president in January, a year ago. Previous to that I was trustee. I first became a Trustee in 1878.

Q. Do you know anything about the minute book of the New York Bay Cemetery Company.?

A. I do.

Q. Did you ever receive the minute book from Mr. Buckmaster.

A. We did, we had it in our possession.

Q. How did you get it, and when?

Question objected to as immaterial.

20

Q. Where was that minute book kept?

A. It was kept in the office, 254 Washington street, I believe it was where our secretary used to have his office. Isaac Van Saun was our Secretary then until he died in 1875 or 1876.

Q. You did not come into possession until 1878?

A. I mean two or three years after we had possession—1881.

Q. Who has been secretary since that?

30 A. Mr. Kattenstroth, up to a year ago. He is now Superintendent of the Bay View Cemetery Company adjoining us.

Q. Did you ever see the minute book after it came into the possession of the new trustees?

A. I did.

Q. Where was it kept?

A. In Washington street.

Q. What is the last you ever saw of it?

40 A. About 1880 or 1881, I don't remember the time exactly; Mr. Van Saun was secretary at that time.

Q. What kind of a book was it?

A. It was nearly as broad as it is long, about half an inch or a little over thick.

Q. Have you caused search to be made for that book?

A. We have, we have inquired all over; I inquired of Mr. Onslow who kept the office in conjunction with Mr. Van Saun, and about a year and a half ago I wanted to look in the book and I inquired for the book of the son of Mr. Van Saun.

Q. You caused diligent search to be made for the¹⁰ book?

A. I did.

Q. Tell what you did?

A. We could not find it and I asked the son of Mr. Van Saun and he said it was left in the office of his father, and he gave it to Mr. Onslow.

Q. What have you done since this suit was commenced in reference to obtaining possession of that book?

A. We have advertised for the book, and have²⁰ offered a reward of \$100 for it.

Q. Personally have you searched in the office of the secretary of the company for the book yourself?

A. Yes.

Q. Do you know of anybody else having searched?

A. Our superintendent, John Kelly.

Q. Do you know whether Mr. Kattenstroth has looked for it?

A. Mr. Kattenstroth was requested to search for it.

Q. Have you ever been able to get any informa-³⁰tion from which you could get hold of that book?

A. Yes, we have learned that three or four individuals had this minute book, after we searched for it.

Q. What three or four individuals do you refer to?

A. One of our trustees who was particularly instructed to find out all about it; he traced the book from Mr. Onslow to — (interrupted by objection.)

Q. Who did you learn had this book? ⁴⁰

A. Mr. Shrope was one and Mr. Onslow and Mr. Pratt.

Q. Have you ever applied to them for the book?

A. I have asked Mr. Onslow. I have not applied to Mr. Shrope or Mr. Pratt.

Q. Is Mr. Van Saun dead?

A. About 1881, I think, or 1882 it might be.

10

RICHARD ONSLOW sworn on the part of the defendant, testifies as follows:

Direct examination by Mr. NEWBOLD:

Q. Have you ever seen the minute book spoken of by the last witness?

A. I have seen the book that I supposed probably was the minute book; it was a small book that must have cost about 25 or 30 cents; it was about as broad
20 as it was long, probably $\frac{3}{4}$ of an inch thick.

Q. Where did you see that?

A. I saw it when it came over from New York, when they brought all the books and papers over.

Q. When who brought it?

A. Mr. Van Saun was there and the rest of the trustees.

Q. Where was it put then?

A. I could not say, it laid round the office of the company. I was in with them all the time, till
30 the thing was moved.

Q. You were in what business?

A. Half a dozen businesses; detective and most everything; I occupied the office with them.

Q. When was the last you saw that book?

A. The last time I saw that book was when Mr. Shrope brought it back. I lent it to him.

Q. When did you lend it to him?

A. I should judge it was about 1883. It was when the Arlington Cemetery was started. He asked me
40 if I had any books about the New York Bay Cemetery. I pointed to a book on the safe there that

might give him some information ; he looked at the books and asked me if I would lend him that ; I said yes, if he would bring it back. He took it and brought it back in three or four days. Some weeks after that he borrowed it again and brought it back again.

Q. When was the last time he borrowed it ?

A. In the year 1883 or 1884. I put the book along with a lot of papers, bill heads belonging to the cemetery company with the intention of sending¹⁰ them down, and my impression is I sent it down to the cemetery company where it belonged. I am under the impression I gave it to Mr. Kattenstroth ; he says I didn't, but I think I did.

Q. What relation did he then bear to the company ?

A. He was secretary and entitled to all the papers belonging to the company.

Q. You say that was about 1884 ?

A. Yes, 1883 or 1884, I don't remember the year ;²⁰ it was while he was secretary. I possibly might not have given it to him, it is my impression I did. I spoke to him about it and he says he never saw it.

Q. Have you ever seen it in the office since that time ?

A. No, sir.

Q. You have been in the office ever since ?

A. Yes, sir.

Q. Would you be able to identify that book again ?³⁰

A. I would, I think.

Q. Did you read its contents ?

A. I did many a time ; looked to see what was into it, with other parties.

Q. Did it purport to be the minutes of the New York Bay Cemetery Company ?

A. I could not tell ; part of it was wrote in pencil and part in ink, and it looked as though it was a worthless book.

Q. What did it refer to ?

A. Referred to meetings and elections of the New⁴⁰

York Bay Cemetery Company. It was a very small affair, a poor affair, and I never thought nothing about it.

Q. You have never seen that book since you are under the impression you gave it to Mr. Kattenstroth?

A. No, sir; I have searched all over and cannot find it.

Q. You have been asked to search for it?

10 A. Yes, I have searched everything, all through the office. I was requested to do that by the trustees of the company.

Cross-examination:

Q. Did you know there were two companies, one known as the New York Bay Cemetery Association and the other known as the New York Bay Cemetery Company?

A. No, sir, I wasn't aware of that.

26 Q. Can you tell from your recollection of this book whether it purported to be the minutes of the Cemetery Association or the minutes of the Cemetery Company?

A. I can't tell you.

Q. What was the binding?

A. Common paste board as you can buy for 25 or 30 cents.

Q. Paper sides and leather back?

A. No leather at all about it.

30 Q. By Mr. NEWBOLD. You were offered a reward of \$100 if you would find this book?

A. Yes, Mr. Lewis offered me \$100, and then I afterwards saw the reward advertised, and I looked for the book.

HARRY H. SHROPE, sworn on the part of the defendant, testifies as follows:

40 *Direct examination:*

Q. You are a lawyer in Jersey City?

A. Yes, my office is 451 Bergen avenue.

Q. Do you remember to have seen this book spoken of by Mr. Onslow?

A. Yes, sir.

Q. When?

A. The first time I think was the fall of 1883.

Q. Where was it you saw it and how; give us the circumstances?

A. I was asked to see if I could get a list of names¹⁰ of the lot owners of the New York Bay Cemetery Association, and naturally I went to their office and Mr. Onslow told me there was nothing there. I asked him to look and he looked into a desk in a little office; in there was an old book and some envelopes and some papers; and he says, here is something; you might get some information out of that; and I took it and looked it over and saw it showed meetings of the New York Bay Cemetery; whether Association or Company, I don't know which; and I didn't see what²⁰ I wanted, and I was in a hurry and I asked him if I could take it, and he said yes if I would bring it back, and I took it; and I took it up to Mr. Pratt.

Q. How long did you keep that?

A. I think about two weeks.

Q. Did you read it?

A. Some of it. I had to read it to find out what I wanted.

Q. What did you do with it?

A. I took it to Mr. Pratt, he is controller of the Ar-³⁰lington Cemetery. I took it to the office of the Arlington Cemetery Association.

Q. Did you ever return it?

A. I did.

Q. Did you ever get it again from Mr. Onslow?

A. I did, I think about a year after.

Q. How long did you keep it?

A. About the same time, two weeks.

Q. Did you then read it through?

A. No, not the second time.

40

Q. For what purpose did you get it the last time?

A. I do not know. I was requested to get it by Mr. Pratt, and I gave it to Mr. Pratt.

Q. Did you take it back again from Mr. Pratt?

A. I did, about two weeks after, I should judge, and I delivered it to Mr. Onslow at the office of the New York Bay Cemetery Company.

Q. Have you ever seen the book since that time?

A. No, sir.

Q. Have you made search for it?

10 A. I have. I was requested by the company to make diligent search and to produce the book if I could. I have no knowledge of where the book is. All I know about it is I left it at the office.

Q. When you returned that book into the hands of Mr. Onslow who was secretary?

A. Mr. Onslow told me Mr. Kattenstroth was secretary.

Q. What did that purport to record—the meetings of that company from what time to what time?

20 A. I could not give you the dates.

Q. By Plaintiff. You don't remember whether it was the book of minutes of the New York Bay Cemetery Association or the New York Bay Cemetery Company?

A. I could not say; I know it was the New York Bay Cemetery—whether company or association I could not say.

30

JULIUS H. PRATT, sworn on the part of the defendant, testifies as follows:

Q. You are comptroller of the Arlington Cemetery Association and were in the years 1883-4-5?

A. Yes, sir.

Q. Do you remember to have seen the book spoken of by the other witnesses?

A. Yes, I saw it in the summer or fall of 1883 first.
40 Harry Shrope brought it to me and I had possession of it about two weeks and I returned it to him.

Q. Did you read it?

A. I did ; I looked it over.

Q. What did it purport to be ?

A. The minutes, records of the New York Bay Cemetery Company.

Q. Do you remember from what date to what date ?

A. It extended over many years ; I could not say exactly. I noticed the record seemed to close about 1878, I think. I can't tell when it begun, it went¹⁰ back more than twenty years, certainly.

Q. Did you have that book again ?

A. I did in the fall of 1884. Mr. Shrope brought it to me again, I had possession of it a few days and I returned it to Mr. Shrope.

Q. Did you then consult it, read it ?

A. Yes, sir.

Q. You had been forming the Arlington Cemetery Association ?

20

A. Yes, sir.

Q. Since the time you say you last returned it to Mr. Shrope, had you ever seen the book ?

A. No sir.

Q. Have you any knowledge of where it is ?

A. No sir, none whatever.

Q. Has it ever been delivered to you at any place, or on any occasion since that ?

A. No sir.

Cross-examination:

30

Q. Can you remember whether these were the minutes of the New York Bay Cemetery Company, or the New York Bay Cemetery Association ?

A. I could not say certainly. It was the Company or Association which was in existence, prior to 1878 for many years, the one that Mr. Buckmaster managed, I saw his name in connection with it.

Q. Assuming there were two companies, one having the name of the New York Bay Cemetery Association, and the other the name of the New York⁴¹⁾

Bay Cemetery Company, with each of which, Mr. Buckmaster was connected, I understand you to say you cannot tell which it was?

A. No, sir. I understood the Association was organized later, about 1877 or '78.

Q. Assuming that the Association as distinguished from the Company, both having the name of New York Bay, were organized in 1853, and Mr. Buckmaster was president of both of them, you could not tell of which this was the book of minutes, could you?

A. No, it was the one that Mr. Buckmaster managed?

Q. That is what you remember, that he was connected with it?

A. Yes, his name appeared on every page almost. I was struck with that?

20 JAMES DIXON, sworn on the part of the defendant.

Direct examination :

Q. You are one of the trustees of the defendant in this case?

A. Yes, sir.

Q. You were a trustee in 1878?

A. I have been connected with it seven or eight years, perhaps nine.

Q. Have you ever seen this minute book?

30 A. No, sir.

Q. Have you made any effort to find it or get it?

A. Yes.

Q. Tell us what?

A. I have informed the board of its existence, or that I heard that it did exist, and at their request I employed a gentleman to find it. I offered a reward of, I think, \$250 for the finding of this book.

Q. You never have seen it yourself?

A. No, sir.

40 Q. Who did you employ to find it?

A. Mr. Shrope.

Q. Have you ever been able to learn any tidings from which you could trace the book now?

A. No, sir.

Q. Have you any knowledge of where the book is?

A. No, sir.

Q. Have you ever been able to learn any tidings of it from which you could find it?

A. No, sir; not positive.

Q. Who of the trustees specially had this matter¹⁰ of hunting for the book in hand?

A. I was authorized by the Board to hunt it up. The Board authorized me to offer more than \$250 for the finding of this book. But left the matter to my discretion as to what I should offer.

SAMUEL HEMINGWAY, sworn on the part of the defendant, testifies as follows: 20

Direct examination:

Q. You are one of the trustees of this association?

A. Yes, sir.

Q. Have you ever seen this minute book?

A. No, sir.

Q. Do you know what efforts were made to produce it?

A. There has been searching round and inquiries made and reward offered for it. 30

Q. Have you personally made any?

A. Yes, I made some inquiries about it; one of our trustees was specially deputized to hunt it up.

Q. Have you any knowledge now as to its whereabouts?

A. None whatever.

AUGUSTUS M. KATTENSTROTH, call by the defendant, testifies as follows :

Q. You were once Secretary of the New York Bay Cemetery Company.

A. Yes, sir.

10 Q. When were you first made Secretary ?

A. I was acting Secretary from December, 1880, to January or February, 1881, then I was elected Secretary and remained Secretary up to the 30th of June last. Since June 30th, I have been Superintendent of the Bay View Cemetery.

Q. Have you ever seen the minute book spoken of by Mr. Onslow and Mr. Pratt ?

A. No, sir.

20 Q. Have you ever seen a book belonging to the New York Bay Cemetery Company of that size ?

A. No, sir, not to my knowledge.

Q. Mr. Onslow says that he is under the impression that he gave that book into your possession once ?

A. He did not.

Q. Are you positive of that ?

A. Quite positive. I never saw the book to my knowledge.

Q. Have you searched for the book ?

30 A. Yes, since I understood the book was lost I have searched for it in the office of the New York Bay Cemetery Company on the cemetery grounds ; that is the superintendent's office now. It was the office of the Secretary and President both from 1881 up to last June.

Q. When did you make that search ?

A. I made that search after I was subpoenaed here at the request of Mr. Lewis ; the first term of the Court that this case was on the list.

40 Q. What search did you make ?

A. I went in company with Mr. Kelly the super-

intendent, and examined the papers in the safe and the different books and papers they had in the office, went through them all, made a through search, Mr. Kelly was with me.

Q. Have you now any knowledge as to where that book is?

A. No, I have not.

Q. None whatever?

A. None whatever. I would like to state in reference to this very same matter, at the office all the papers that were placed in my possession were moved to the cemetery in 1881 and if any books are in the possession of Mr. Onslow he had no right to them, he had no right to give out any books. Under those circumstances I am very positive that that book never was in my possession.

Q. Do you remember taking down to the cemetery some bill heads on one occasion?

A. No, sir. I don't recollect. I have done that a great many times. We had all our printing done in Jersey City and the bill heads were left down at the American District Telegraph office.

Q. Are you now in the employ of the Buckmasters'?

A. No, sir.

Q. They are the principal owners of the cemetery?

A. No, sir, they are not; they have shares in the cemetery as I understand it.

Q. You are secretary?

30

A. Superintendent.

Q. Have you ever searched in the office of the company that you are now Superintendent of for that book?

A. Yes.

Q. You could not find it?

A. No, sir, I could not.

Q. When you went from the New York Bay Cemetery to the Bay View Cemetery did you take any books with you?

40

A. I took a receipt book.

Q. Anything else ?

A. No, sir.

Q. You say you looked there to see if this book was there ?

A. I did ; I made a thorough search all over ; searched there as well as at my own house.

Q. When did Mr. Van Saun die ?

A. I believe he died the 1st of January, 1881.

16 Q. Had he then ceased to be secretary of the New York Bay Cemetery Company ?

A. His son did the office work from the time Mr. Van Saun was taken sick the fall before, and I was acting secretary and attended the meetings, went to Jersey City about once a week to sign the necessary papers that were left there.

Q. Do you have any knowledge now of where that book is, or have you had any knowledge since 1884 at any time as to where it was ?

20 A. No, sir, I have not.

Cross-examination :

Q. Have you the slightest information, or suspicion as to where that book is ?

A. I have not.

Q. During the time you were secretary of the company as you have testified, in what book did you keep the minutes of the proceedings ?

A. The minute book which I received from the 30 Van Saun family.

Q. Do you know where that book is now ?

A. I presume it is in the possession of the trustees, I don't know.

Q. Who requested you to make this search for this book ?

A. Mr. Lewis, the defendant's attorney.

Q. Tell me what he said to you in reference to making a search ?

40 A. He said, " Mr. Kattenstroth, I would like very much to have the book, do you know anything about it." I told him I did not. " If you find that book,"

he said, "I will give you a very liberal reward." I told him it was not necessary to offer me a reward, if I could find the book it would certainly be placed in his hands.

Q. You looked in the office of the defendant and in the office of this new company and in your own papers so as to look wherever you could think the book could possibly be?

A. Yes, sir.

Q. And you didn't find it? 19

A. No, sir.

Q. While you were Secretary of the New York Bay Cemetery Company, do you remember the annual meeting that was held in January, 1885?

A. Yes, sir.

Q. You were present there, were you not?

A. Yes.

Q. Do you remember any one being present at that meeting as counsel or attorney for the heirs of Thomas H. Buckmaster who claimed the right to vote at that meeting. 20

Question objected to as not a proper subject matter for cross-examination.

Q. Do you know whether before you became superintendent of the Bay View Cemetery Company an offer was made to the defendant that you might act as superintendent of both companies, and that they might both be conducted under one arrangement? 30

The question is objected to as immaterial and overruled.

WILLIAM BUMSTED, sworn on the part of the defendant, testifies as follows :

Direct examination :

Q. You are one of the trustees of the New York Bay Cemetery Company? 40

A. I am.

Q. Have been for how long?

A. Ever since it has changed hands from the Buckmasters, about 1878, I think. I was elected trustee in New York, I cannot remember the date.

Q. Have you ever seen the book of the old company?

A. No, sir; I have never examined it for the simple fact that I am not much of a scholar.

10 Q. Do you know of its having been searched for by the new trustees?

A. I do, and a reward of \$100 has been offered for it publicly, and then I looked for it.

Q. You say you have never seen it?

A. I don't know as I ever did.

20 GEORGE E. CUTTER, sworn on the part of the defendant, testifies as follows:

Q. You have been a trustee of the New York Bay Cemetery Company?

A. I have, from April, 1878, until June, 1885. I am not now a trustee. In 1878 I was elected treasurer; in 1879 vice-president; in 1880 president; and since that time up to last June I was trustee.

Q. Have you ever seen the book that was spoken of by Mr. Onslow and the other witnesses?

30 A. Not since we got it out of the office in Dey street.

Q. Were you one of those who went?

A. Yes, sir.

Q. Whose office?

A. Mr. Buckmaster's.

Q. It was then placed where?

A. It was placed in the hands of Secretary Van Saun.

Q. Do you remember when he died?

40 A. I think he died in December, 1880, or January, 1881.

Q. The office of the company was then with Mr. Onslow, was it?

A. Yes, sir.

Q. Have you any knowledge whatever as to where that book is?

A. I have not.

Q. Or any knowledge from which you could trace that book?

A. I have not. I never considered it the minute book for the reason I only saw it once and then Mr. Van Saun presented it to me, and in the latter part of it, next to the blank leaf, he says to me here is the proceedings of the last election. I seen that.

Q. The book you refer to was what kind of a book?

A. A small book about 12 or 14 inches long, about 12 inches wide with a paper board cover, marble colored, about a twenty five cent book, about as thick as your finger.

Cross-examination :

20

Q. Did Mr. Van Saun when he became Secretary of the company continue the minutes in this book?

A. No; he opened a new book.

Q. (Showing witness the book) Is this the new book you refer to when the new trustees came in?

A. Yes.

Defendants now desire to go into secondary evidence as to the contents of that minute book.

Plaintiff objects that they have not satisfactorily accounted for the absence of the book of minutes of the New York Bay Cemetery Company, the defendant. There was an organization formed as the New York Bay Cemetery Association, and it had minutes; there is no proof as to whether this particular missing book that these people had in their possession, was the book of the Company or the Association.

30
40

The Court thinks there is sufficient evidence of the loss of and diligent search for the book to permit secondary evidence of its contents.

JULIUS H. PRATT recalled on part of the defendant.

Direct examination :

10 Q. You said you read this book of minutes of the New York Bay Cemetery Company. Did you notice where the meetings were recorded as being held?

Plaintiff insists that the witness should be asked what the book was.

Q. What did the book purport to be from its contents?

A. It purported to be a record of the meetings of 20 the company, and of elections, and some other transactions.

Q. From an early date you had spoken of—about when?

A. More than 20 years back of 1878, probably 25 years before 1878.

Q. Did the minutes state where the elections were held?

A. Yes, they were held in the office No. 5 Dey street, New York City.

30 Q. Were all the elections therein referred to held in New York?

A. So far as I can recollect they all seemed to be held there.

Q. Whose name appeared to the minutes as the party recording them?

A. I cannot certainly say as to the party recording. The names I remember particularly in connection with those readings were two Buckmasters. I don't remember their first names, but one was 40 President and one was Treasurer; there seemed to be very few other names recorded than those two.

Q. Were the names Thomas H. Buckmaster and George Buckmaster?

A. I could not say positively.

Q. Did these purport to be meetings of the stockholders of the company?

A. Meetings of the stockholders, and I think of the trustees.

Q. Referring back to the beginnings of those minutes or records, tell us as well as you can what the contents of the first minute recorded there was? 10

A. I don't recollect the first portion of the records particularly as distinguished from the rest. There were records of the annual meeting of the lot owners, of the election of officers, of the proceedings of the officers from year to year.

Q. Do you remember what the heading of the first minute was after the place where it was held?

A. No, sir. I could not say as to the first particularly. 20

Q. Which ones can you speak to?

A. Only generally, I did not study it with reference to remembering.

Q. Did they all, so far as you remember, have a heading as to the place where they were held?

A. It was part of the records that they were held at such a place and such a time.

Q. What place?

A. Dey street, the office of the company; No 5 Dey street, I think.

Q. Were the meetings held anywhere else that you remember? 30

A. No, sir; I noticed one entry in particular where the Buckmasters settled some account of the Buckmasters' for thirty thousand dollars by a conveyance of lots.

Q. Thirty thousand lots or thirty thousand dollars?

A. My recollection is that it was a claim of thirty thousand dollars. 40

Q. Can you tell whether you read the minutes during the years 1870, '71 or '72?

A. I read them over not particularly with special regard to each year; I cannot distinguish one year from another.

Q. Do you remember enough to tell us where the minutes recorded that those meetings were held for the years '70, '71 and '72?

10 A. Yes, I think I can recollect that they were recorded as being held in New York City at the office in Dey street.

Cross-examination:

Q. Can you tell when those minutes began?

A. No, sir.

Q. Do you remember the mention of a person by the name of Benjamin H. Broomhead in those minutes?

20 A. No, sir.

Q. Do you remember mention in these minutes of a person named Jacob Vreeland?

A. I think there was such a name, in what connection I cannot recall.

Q. Possibly as holding a mortgage on the cemetery property?

A. Yes. I knew Mr. Vreeland, and on that account I think I would feel that interest when I saw his name so much as to make me remember it.

30 Q. You do have a recollection that somewhere in the minutes he was mentioned as holding a mortgage of the cemetery company?

A. I cannot tell in what connection.

Q. Do you remember of Belknap Smith being spoken of?

A. No, sir.

Q. Or Samuel B. Conley?

A. No, sir.

40 Q. You are not able positively to tell us whether there was any entry in that book of minutes of the lot owners prior to 1858?

A. No, sir.

Q. You are quite positive that all the records you read were entered as having been had at this place in Dey street?

A. I think so, yes.

Q. Do you remember the date of the meeting in which reference was made to the settlement of about thirty thousand dollars that you have referred to?

A. No, sir.

Q. That you think was an account of an indebtedness of thirty thousand dollars from the New York Bay Cemetery Company to Mr. Thomas H. Buckmaster?

A. That is my recollection of it.

Q. You also recollect it was stated that that indebtedness was settled by the conveyance of lots from the Cemetery Company to Mr. Buckmaster?

A. Yes, sir.

Q. Do you remember any entry in that minute book of a meeting held at No. 9 Exchange place, Jersey City?

A. No, sir.

Q. Would you undertake to say there was no such entry there?

A. No, sir.

Q. As I understand it your object in looking over the minutes was to have them serve to some extent as a model or as an assistance to you in organizing the Arlington Cemetery Association?

A. I was in search of information at that time among all cemeteries where I could have access and this book was offered to me. I thought I might learn something there in the management or the mismanagement of cemeteries, that would be of use.

Q. Did you personally return it?

A. I saw no one except Mr. Shrope in that connection, he brought me the book and I returned it to him.

Q. Was he counsel to you or to the Arlington Association?

A. No, sir.

Q. How did you come to apply to him?

A. I don't remember that I applied to him. It appears to me he was in our office at the time, doing some office work, for we were sending out circulars and getting information, and I think in reply to some question of mine asking for information he asked me if I would like to look at the record of that cemetery company; I told him I would like to see it.

10 Q. Do you remember anything being said between you and him in regard to his obtaining for you a list of the lot holders in the cemetery company?

A. Yes, I was desirous of getting such a list.

Q. What was the purpose of that?

A. I think the purpose was to find out from them if they wished to make a change in location; I had heard a great deal of dissatisfaction among them, and I wished to become acquainted with some of them in order to understand the facts.

20 Q. And see if they desired to change their location to the Arlington Cemetery?

A. Yes, sir.

Q. Had you any object in examining this book of minutes except to ascertain how the company had been organized in the beginning and who the lot owners were?

A. No special object other than that such information might be of use to us.

30 Q. You had no interest in the transaction between Thomas H. Buckmaster and the company?

A. No, sir.

Q. What you saw in reference to those transactions or to the meetings you only saw casually?

A. Yes, incidentally, that was all.

HARRY H. SHROPE, recalled by defendant, testifies as follows:

Direct examination:

Q. You read this book?

A. Only partially.

Q. To what extent?

A. Glanced through it to see if I could find the¹⁰ list of names. I took it from the beginning of the book and went through it. I did not read it, I only glanced at names.

Q. Did you read the headings?

A. I read only some of the headings, not all.

Q. Did you look at every page to get the information you were searching for?

A. I turned every page in the book.

Q. Do you remember the places of meetings that were recorded there? 20

A. I could not say where they were held, no, sir. I think it purported to give the place of meeting and New York is the only place I can recollect.

Q. Did it record the meetings of stockholders?

A. Yes, sir, and elections of the Board of Trustees also I think.

Q. You say your memory is that New York was the only place?

A. All I recollect of seeing was that the meetings were held in New York City. 30

Q. How much time were you occupied in looking through the book?

A. It may have been an hour.

Q. By the COURT. It contained the minutes of how many years?

A. I could not say that. I only looked through to see if I could find a list of names. I turned from one page to another and if I did not see a name I would turn. I was interested in nothing else in the book. I saw the heading of the book, saw it was a meeting of the stockholders.

Q. What names did you see there as recorded as the trustees elected?

A. I don't know.

Q. Do you remember Buckmaster's name?

A. I remember the name appearing there, I don't know in what connection; I don't know which Buckmaster it was.

Cross-examination :

10 Q. How many records of meetings do you remember reading?

A. I don't recollect.

Q. Do you remember how many pages there were in the book?

A. I do not.

Q. Can you say there was no record of any meeting in the book that was held in Jersey City at No. 9 Exchange Place?

A. No, sir, I am not able to say.

20 Q. Do you remember in what year the records purported to begin?

A. No, sir.

Q. I understand your only object in looking through it was to see if there was a list of the names of the lots owned?

A. Yes, sir.

Q. Did you find them?

A. I did not.

30 Q. You had no interest in the transactions between Mr. Buckmaster and the New York Bay Cemetery Company?

A. No, sir.

RICHARD ONSLOW, recalled by defendant :

Q. You have said you read the book that you spoke of?

40 A. I never read all of it, I looked it over just to see where the meetings was held, whether there was

any held in Jersey City or not. That is the only object I had in view.

Q. You did look through the book to find that out?

A. Yes, sir.

Q. Examined all the meetings?

A. Pretty much all of them, I can't say all of them. I looked through several times with different parties.

Q. Did you find any record there of any meeting¹⁰ of lot holders or trustees as held anywhere else but New York city?

Question objected to as leading.

Q. What did you find to be the fact?

A. I found they was held in Dey street is my impression of it. I think it was 3 and 5 Dey street. My object was to see at the time whether there was any held over in Hudson county. 20

Q. Did you find any?

A. No; Mr. Van Saun went over several times and I looked with him, merely saw him turn it over and I then looked it over myself.

Q. You say you did not find any record there of any meeting of lot holders or trustees in Hudson county?

A. My recollection, none.

Mr. WHEELER. Is not that objectionable? 30

The COURT. It is putting the testimony in the question and not in the answer of the witness.

Q. Do you remember the names that you saw upon those minutes?

A. No, I did not look for that.

Cross-examination.

Q. Do you remember when the records began? 40

A. No, sir.

Q. Do you remember how many years they continued?

A. No, sir.

Q. Do you remember how many pages there were upon which there were minutes?

A. No, I could not say.

Q. Were you a lot holder in the New York Bay Cemetery?

A. Yes, and have been since 1865, I think.

1. Q. Have you your deed with you?

A. Yes, sir.

Q. Will you let me look at it?

A. Yes, sir. (Hands it to Mr. Wheeler).

Q. I see this deed to you is signed T. H. Buckmaster, Secretary. Do you remember seeing his name mentioned in this book of minutes as secretary?

Q. Not that I am aware of. That deed was given to me in the office in New York.

20 A. I notice George T. Bradley's name is signed as Register. Do you remember seeing his name entered in this book of minutes?

A. No, sir.

Q. Do you feel any alarm as to whether the deed to your lot to you can be disputed?

A. No, sir.

Q. It never has been disputed, has it by the Company?

30 A. No, sir.

Q. Have you ever voted as a lot owner at the meetings?

A. Yes, I have pretty much all the time,

Q. Can you say whether you examined the minutes of every meeting of lot owners or directors?

A. No, sir, merely went over to see whether there was a meeting held in Jersey.

Q. You cannot say that you examined them all?

A. I don't remember.

Mr. NEWBOLD. Do you intend to make that deed evidence?

Mr. WHEELER. I want to put in my preliminary proof first.

The COURT. It has no bearing in the case now.

GEORGE BUCKMASTER, called by the defendant. 10

Direct examination:

Q. I believe you were secretary of the New York Bay Cemetery Company?

A. At one time, yes; in 1869 and '70 and part of '71.

Q. Did you as secretary give notice of the meetings to the lot owners?

A. I think they were published.

Q. (Showing witness a newspaper.) I call your attention to an advertisement on the third column of the "American Standard," of date January 4, 1870. Is that a notice which you caused to be put in?

A. Yes, I caused that notice to be put in.

Q. It is a notice of the annual election for eleven trustees of the New York Bay Cemetery Company to be held on Tuesday, January 11, 1870, at the office of the company. It is issued from the office of the New York Bay Cemetery Chmpany, 195 Broadway, Room 8, New York, Dec. 29, 1869. Was that the place that the meeting was held at?

A. That I can't say.

Q. That is where you issued the notice from?

A. Yes, sir.

Q. That is where the election was held?

A. I don't recollect whether it was held in New York or Jersey City.

Q. Were you present at the election?

A. I was.

Q. That is the only notice that you gave of an election?

A. That is the only one; I think it was published two weeks.

Q. Can you tell by referring to the mark of the printer as to whether it was published more than one week?

A. I cannot, I don't know whether it was published more than one week or not.

Q. Do you know what trustees were elected at that election?

10 A. I don't recollect. I think I was elected one, I think Thomas H. Buckmaster, who was my father, and William Edgerton also, I think. I don't know whether George T. Bradley was or not, I think it is very likely he was, and I think Lansing Zabriskie was also elected trustee at that time.

Q. Was he in the subsequent year, January, 1871, also elected?

A. I don't recollect.

20 Q. Your meetings were to be held on the second Tuesday of January of each year?

A. I think so.

Q. You only remember Zabriskie, Buckmaster, yourself and Edgerton?

A. I think Louis Phfaler was also elected. There were eleven elected. I don't remember who they were. Phfaler lives at Greenville, he was a stone-cutter there.

Q. Were you in the office of the company in 1868?

30 A. I think I was.

Q. In what capacity?

A. I was an assistant.

Q. Do you know whether you attended to the advertising of the meetings for January, 1868? (handing witness a newspaper.)

A. I see by the advertisement that was Thomas H. Buckmaster. That was a notice of a meeting for election of directors in 1868. That was issued from the office of the company 195 Broadway, New York City, Room 8, that was the office of the company.

40 Q. Were you present at that election meeting?

A. I cannot say.

Q. Were you also in the company in 1869?

A. Yes, sir.

Q. The notice appearing in the fifth column, second page, of the "American Standard" January, 1869, was a notice issued for the election of officers for 1869?

A. Yes, sir, that was the office of the company at that time.

Q. (Handing witness newspaper.) This notice on the top of the first column, third page, "American Standard," of January 2, 1866, is that the notice that was issued for the election in 1866? ¹⁰

A. I can't say, I was not in the office at that time.

Q. Do you remember who were elected trustees in 1868?

A. About the same parties all the way through.

Q. And in 1869 about the same?

A. Yes.

Q. Do you know whether a Mr. Winterton was elected a trustee? ²⁰

A. I don't remember him.

Q. Do you know whether Mr. Bumsted was ever elected a trustee?

A. I do not.

Q. Were you a trustee during 1867, '69, '70 and '71?

A. I think I was in '69, '70 and '71.

Q. Your father was a trustee in 1869, 1870, 1871 ³⁰ and 1872?

A. I guess he was one all the time.

Cross-examination :

Q. You were present at these meeting referred to?

A. Yes, three of them. 1868, '69, and '70.

Q. And at each of these meetings the same Board substantially was elected?

A. Yes, sir.

Q. Were there any trustees who were managing ⁴⁰

the affairs of the New York Bay Cemetery Company during the years 1868, '69, '70 and '71, except the trustees that were elected at these meetings?

A. No, sir, there was none.

Q. Did these gentlemen who were elected at these meetings in point of fact act as trustees in the New York Bay Cemetery Company during the years mentioned in my last question?

10 Question objected to as not proper cross-examination.

A. Yes, there were meetings held at which these trustees were present.

Q. You have stated that you did not remember whether one of these meetings was held in Jersey City or New York City; why don't you remember that?

A. That was the 1871 meeting; I have a recollec-
20 tion that that meeting was held in Jersey City, No. 9 Exchange Place.

Q. By the COURT. Had you any office in Jersey City?

A. Except at Greenville, the cemetery office.

Q. Whose office is this at No. 9 Exchange Place?

A. Lansing Zabriskie's.

Q. And he was one of the trustees?

A. Yes, sir.

Q. Then the Company had an office at the Ceme-
30 tery?

A. Yes, sir.

Q. During these years that you have mentioned who was the President of the Company?

A. Thomss H. Buckmaster.

Q. I think you said part of the time you were Sec-
retary?

A. Part of the time.

Q. What business was the New York Bay Ceme-
tery Company doing during these years?

40 A. Selling lots in the Cemetery and taking care of
the Cemetery.

Q. Did it execute deeds of these lots?

A. Yes, sir.

Defendant objects to this line of testimony, as not being a proper subject matter for cross-examination.

Q. During all these years you have mentioned did you ever hear any objections from any person owning a lot in the Cemetery, or did you ever know of any such objection to these trustees, objecting to such as officers of the Company?

A. No, sir.

Q. Do you remember being present at a meeting of the trustees of the Cemetery Company, held at 9 Exchange Place, Jersey City, in which a vote was had in reference to ratifying all the acts of the Board of Trustees, which they had.

The COURT. That is new matter, and you will have to recall the witness.

Re-direct examination :

Q. You recollect the meeting held at Mr. Zabris-
kie's office in Exchange Place in 1871?

A. Yes, sir.

Q. Was that a meeting of the lot owners at a meeting of the trustees?

A. That was an annual meeting, I think.

Q. What do you mean by that?

A. Election, I think, but I am not over positive about that.

Q. You did not have an office at Mr. Zabriskie's?

A. No, but we were on very good terms always.

Re-cross-examination :

Q. I understand you did in point of fact sometimes meet there, the trustees did?

A. Yes, sir.

Q. When was the office moved to this place in Dey street that has been spoken of?

A. I think it was in 1871.

Q. When was it in reference to your father's death?

A. About two years before he died.

Q. Can you tell whether the change in the office from 195 Broadway to Dey street was made at the time the Western Union Telegraph Company bought that building?

A. Yes, they bought the building we were in and pulled it down, that is the time the change was made.

Q. Look at this deed, is that Thomas H. Buckmaster's signature?

A. Yes, sir.

Q. And it is a deed from the company to Mr. Chilver?

A. Yes, sir.

Q. That is his signature as secretary?

A. Yes, sir.

20 The deed is dated March 16, 1857, and is marked Exhibit D. 1 for identification.

Q. I show you another deed to William Hughes dated September 4, 1863, is that his signature also?

A. Yes, sir.

It is marked Exhibit D. 2 for identification.

The defendant offers Exhibit D. in evidence.

Plaintiff objects to it as irrelevant.

30 Defendant offers it because it incorporates the rules and regulation of the New York Bay Cemetery Company.

The COURT. If that is the only object of the deed it is irrelevant.

Noon recess.

GEORGE BUCKMASTER, called on the part of the defendant.

Q. Do you know what book the rules and regulations of the New York Bay Cemetery Company were in?

A. Yes, in the minute book.

Q. What was the size of that book?

A. I should think about 12x14 and about as thick as your finger.

Q. Was that book turned over to the trustees?

A. I think it was; I was not secretary at that time. I was not at the office then.

Q. Have you any knowledge where it is?

A. No, sir.

Q. I show you the printed rules and regulations upon the margin of Exhibit D. 1 (handing it to witness.) Are they the rules and regulations of the New York Bay Cemetery Company? 20

A. I suppose so.

Q. You executed deeds with those rules and regulations?

A. They may have been changed.

Q. So far as you know those were the rules and regulations at the time the deed was executed?

A. So far as I know, yes, but I don't know anything about it.

Q. I show you Exhibit D. 3. Is that the signature of Thomas H. Buckmaster, the testator of the plain-30 tiff, your father?

A. Yes, sir.

JAMES M. REILLY, sworn on the part of the defendant, testifies as follows:

Direct examination:

I am a printer. I have been a printer forty years. I was employed upon the "American Standard" from the time it started till it stopped. 40

Plaintiff will not contest the printing and publishing of these papers and will admit they are files of the "American Standard."

The WITNESS. The letters "4 ja 1 w" means January 4th, one week.

10 Defendant offers in evidence the files of the "American Standard" containing the three notices to which reference has been made for the years 1868-1869 and 1870, and also for the years 1865 and 1866, and also January, 1863, containing a notice of an election of eleven trustees for the New York Bay Cemetery Company. Also the issue of January 3, 1865; also January 21, 1866.

20 Plaintiff objects to these that have not been proven by any person connected with the company that the notices were sent to the paper for publication. The first three were testified to by Mr. Buckmaster, but there is no proof as to the last three.

Q. In what capacity were you employed in the "American Standard" in 1863?

A. I don't remember. I have been employed there for 35 years, and I was foreman of the paper at one time; I cannot remember the dates.

Q. Who received the notices in 1863 for publication in that paper?

30 A. I think it was Mr. Griswold.

Q. Have you any knowledge as to who brought the notices that I have shown you?

A. No.

Q. Do you know how the notices of 1865 and 1866 were put in or who received them?

A. Henry A. Griswold was bookkeeper then, he received them in the office, he lives in New York. I have not seen him for a year. I have never heard of his death.

40

Defendant offers the newspapers in evidence

The COURT. They may be evidence of publication, but that must be connected with the company.

Q. Was this newspaper a weekly or daily paper?

A. It was a daily paper.

HENRY STEFFENS, recalled by defendant, testifies as follows :

Q. Do you know the minute book of the New York Bay Cemetery Association that they have had since 1878?

A. Yes, sir.

Q. You knew Mr. Van Saun and knew his handwriting?

A. Yes, sir.

Q. Is this book which I show you marked "Rec-20 ords," the minute book of the New York Bay Cemetery Company?

A. Yes, from April 5, 1878.

Q. In whose handwriting are the minutes on pages 13, 14, 15, 16, 17, 18, 19, 20 and 21?

A. Isaac Van Saun; he is dead. He was then secretary of the New York Bay Cemetery Company.

Defendant offers the record in evidence referring to pages to which attention has been called.

Plaintiff objects to them as immaterial.

The Court received them in evidence subject to objection and to further ruling upon the effect of them later on.

Cross-examination :

Q. Do you know where Mr. Van Saun got the by-laws which are written on the pages of that book which Mr. Newbold showed you?

A. To my recollection they were part of the old

rules and regulations, and we passed upon them in the meeting of the trustees severally and adopted them.

Q. With some changes?

A. The time is so long ago I have no positive recollection of these things.

Q. What is the date of the meeting at which they were adopted?

A. May 27, 1878.

10 Q. You don't remember whether these are the same as the by-laws of the company before that time or not?

A. I could not tell.

Re-direct examination :

Q. You said that they were taken partly from the old by-laws ; do you know what old by-laws you refer to?

20 A. Among the papers we had from the office there was, to my recollection, some old by-laws there, what we took into consideration when we adopted them.

Q. Do you know whether you have got those old by-laws from the margin of the deeds or not?

A. I cannot tell.

Q. Do you know of any other by-laws adopted subsequent to that date by the association?

A. No.

30

AUGUSTUS M. KATTENSTROTH, recalled by defendant :

Q. While you was Secretary of the New York Bay Cemetery Company, did you ever collect any assessments on the lots described in this paper which is the declaration served upon the defendant?

Question objected to as immaterial.

40 Defendant desires to show that by the rules and regulations there were levied upon all the

lots in the cemetery an assessment for the purpose of keeping up the cemetery, and that there have never been any assessments paid upon any of the lots embraced in the claim of the plaintiff, and that was made a condition of their being entitled to possession of the lots—that the assessments should be paid up.

The Court overrules the question.

Q. When you went into the cemetery in 1878,¹⁰ there were no lots marked on the ground, no numbers to the lots on the ground?

A. No, sir; not on the lots, only those that were enclosed. The lots that are enclosed have the number of the lot on them.

Q. Lots not occupied for burial purposes were not numbered at all when you went there, were they, on the ground?

A. I don't believe they were.

Q. That was something that was done after you²⁰ went there?

A. Yes, sir.

Q. By the COURT. You spoke about every fortieth lot being numbered?

A. Yes, I had that done after I went there.

Defendant renews his offer to have Exhibit D. 1 admitted in evidence, as being an admission on the part of the testator of the plaintiff. It is a deed to a third party. It is executed³⁰ by Thomas H. Buckmaster and proved by him.

The COURT. In an official capacity.

Mr. NEWBOLD. Yes, sir.

The Court will not admit it in evidence.

Defendant rests.

GEORGE BUCKMASTER, recalled on the part of the plaintiff :

10 The book referred to yesterday by the witness on his examination, being a record of the deeds made by the New York Bay Cemetery Company to various persons, is produced by the defendant on the call of the plaintiff, and is now shown to the witness.

Q. Is this book I now show you the book you referred to in your testimony yesterday as being the book of the New York Bay Cemetery Company which showed the deeds which had been executed by that company, arranged in the sections ?

A. This is the book I referred to. This is the sectional lot book of the lots sold.

20 The COURT. What point do you desire to make.

Mr. WHEELER. We wish to have it entered that the book from which the witness said he could show what lots were sold and what not, is produced by the defendant in response to our call, and I propose to show there are entered in this book conveyances to Mr. Zabris-
30 kie and from him to Mr. Buckmaster, which are in the deeds in evidence.

Mr. NEWBOLD. I understand these books are books which were made since the new trustees came in.

The WITNESS. They must be copies of the old books.

Mr. WHEELER. It makes no difference, it is a fact that these deeds were from Mr. Zabris-
kie to Mr. Buckmaster—(interrupted).

40 The WITNESS. This very book shown me is the old lot book ; this is my brother's handwriting, the former secretary of the company.

This other one I have been looking at is a copy of this one.

Q. Then the book which is now shown you and which you now have before you, is the book you referred to in your testimony yesterday, showing the lot owners and the conveyances of lots in this cemetery by sections?

A. Yes, sir.

10

Plaintiff offers in evidence the entries in the book of these deeds of Mr. Buckmaster to the lots in suit.

Mr. NEWBOLD. Do you offer the whole book?

Mr. WHEELER. Yes, we offer the book in evidence.

Defendant objects to the book being received in evidence. The Court admits it in evidence.

20

To which admission and ruling the defendant prays a bill of exceptions may be allowed and it is allowed, and signed and sealed accordingly.

M. M. KNAPP, [L. s.]
J. S. C.

Q. When the deeds to Lansing Zabriskie which have been put in evidence in this case, and which were shown you yesterday, which are numbered from 24 to 30 were executed by you, and when you located the lots which are mentioned in them, state whether or not you ascertained from the book before you, which you have just identified with the lots included in the deeds which I have mentioned, were a part of the thirty thousand unsold lots which are mentioned in the original deed to Billings and others, which was also shown you yesterday, and which is marked No. 23?

Defendant objects to the question because the record is the best evidence of what were

40

unsold, and also objects to the question because it is not a proper subject matter in rebuttal.

A. They were.

Q. During the time you were secretary of the company state who furnished the money that was necessary to pay the expenses of the company and keep the cemetery in good repair and order and pay
10 the workmen and employes.

Question objected to as immaterial and overruled.

Q. Who became Secretary of the company after you?

A. Charles H. Buckmaster; he is dead.

Q. Look at the paper that I now show you, and state whether that is his handwriting?

20 A. Yes, sir, that is his handwriting.

Q. And that is the seal of the company?

A. Yes, sir.

Mr. WHEELER. It is a certified copy of a special meeting of the trustees of the New York Bay Cemetery Company held at No. 9 Exchange Place, Jersey City, on the 10th day of June, 1871.

Plaintiff offers it in evidence.

30 Defendant objects to it, that it is not proper evidence in rebuttal; that it does not purport to be from the book of minutes and the original from which this is made is not produced, and because as to the plaintiff, there has been no proof that the book of minutes is lost as to them.

Mr. WHEELER. The loss of this minute book has been proven in the case. Its last whereabouts is shown to have been in the custody of the defendants.

40

The COURT. What is the power of a secretary of a corporation to certify the record and

make it evidence here? It is without the authority of an oath. The Court overrules that copy.

Q. When you were examined this morning, you said that you remembered a meeting that took place at the office, No. 9 Exchange Place, in Jersey City, in 1871, a meeting of the trustees of the defendant; do you remember being present at a meeting of the trustees of the New York Bay Cemetery Company¹⁰ at No. 9 Exchange Place, in Jersey City in 1871?

A. I was at two; one was an adjourned meeting.

Q. At this adjourned meeting, do you remember whether or not any resolution was adopted in reference to a ratification by the board of any previous action, and if so, what?

Defendant objects to the witness giving the contents of that resolution.

Q. State whether or not the resolution to which I²⁰ have just drawn your attention, on the subject of ratification, was in writing, I don't mean the entry in the minutes, but I mean the resolution when it was stated in the meeting?

A. I can't say.

Mr. WHEELER. The resolution is not shown to have been in writing.

Examination by Mr. NEWBOLD: 30

Q. Was there a Secretary of that meeting?

A. Yes, I think it was my brother, C. H., he is dead.

Q. Did he keep the minute of the transaction?

A. I can't say. I think a gentleman named George T. Bradley was chairman of that meeting.

Q. There was some one present who kept the minutes of the meeting?

A. I presume there was.

Q. Did you see the minutes after they were written?⁴⁰

A. I think not.

Q. Who offered that resolution?

A. I can't say. There was quite a meeting of the board there.

Mr. NEWBOLD. We think the writing is the best evidence of what was offered as a resolution. We object to the plaintiff giving the contents of that resolution.

10 The Court will permit the plaintiff to go into secondary proof of the contents of the resolution.

To which permission and ruling defendant prays a bill of exceptions may be allowed, and it is allowed, and signed and sealed accordingly.

M. M. KNAPP, [L. s.]
J. S. C.

20 Q. State the substance of this resolution to which I have called your attention?

Question objected to.

Q. State what was the resolution?

A. I cannot give the exact words, but it was a tendency to clear up all matters.

Q. State the substance of it according to the best of your recollection?

30 Defendant further objects, that there has been no proof as to there being a legal meeting of the trustees.

The Court overrules the objection.

To which overruling the defendant prays a bill of exceptions may be allowed, and it is allowed, and signed and sealed accordingly.

M. M. KNAPP, [L. s.]
J. S. C.

40 Q. Give us your recollection of the tenor of the resolution?

A. All I can say is the tendency of the resolution was to clear up the differences between the New York Bay Cemetery Company and Thomas H. Buckmaster.

Q. I was not asking you about that. I was asking you in regard to a resolution as to a ratification of the previous action of the board of trustees which had been taken in New York City. I ask you what your recollection of its tenor is?

A. The resolution did say that all the acts which had been done in the City of New York should be confirmed by the New York Bay Cemetery Company in Jersey City, at that meeting.¹⁰

The COURT. I will admit in evidence those deeds that were offered by the plaintiff and objected to by the defendant, and respecting which ruling was reserved. Defendant may have its objection and exception to this ruling with the same rights as if ruling had been made at the time each deed was offered. The one objection and exception here allowed may apply to each and all of the deeds.²⁰

To which ruling of the Court as to each and all of the deeds, admitting the same in evidence, defendant prays a bill of exceptions may be allowed, and it is allowed and signed and sealed accordingly.³⁰

M. M. KNAPP, [L. s.]
J. S. C.

Defendant now renews his motion for non-suit for the five reasons heretofore stated.

The Court declines to grant the motion.

To which declination and ruling, defendant prays a bill of exceptions may be allowed, and⁴⁰

it is allowed and signed and sealed accordingly.

M. M. KNAPP, [L. s.]
J. S. C.

10 Defendant asks the Court to direct a verdict in favor of the defendant and against the plaintiff upon the evidence in the case. The Court declines to so direct a verdict.

To which declination and ruling, defendant prays a bill of exceptions may be allowed, and it is signed and sealed accordingly.

M. M. KNAPP, [L. s.]
J. S. C.

20 The plaintiff asks the Court to direct a verdict against the defendant and in favor of the plaintiff.

The Court grants the motion of the plaintiff and directs that a verdict to be entered against the defendant and in favor of the plaintiff.

To which direction and ruling defendant prays a bill of exceptions may be allowed, and it is allowed and signed and sealed accordingly.

30 M. M. KNAPP [L. s.]
J. S. C.

JUDGE'S REMARKS IN DIRECTING VERDICT.

According to my present view, there is no question of fact to go to the jury, there being no dispute as to the property involved, and the verdict will be directed for the plaintiff. I am not unmindful of the strong tendency of the cases to hold that a grant like that¹⁰ conveyed in these deeds, unless it be under a power to sell the land as such, free from the burthens and uses of cemetery purposes, is a mere easement in lands and not an absolute title subject to conditions. The case in 8 Law Reports Queen's Bench, was a case almost precisely like this. There the power was to convey in fee, and although that was a tax case the determination of it rested upon the judgment of the court as to the ownership of the lands. It was a Cemetery Company organized much like this, with²⁰ power to sell lots to individuals for purposes of sepulture and declaring that a conveyance should be in fee, it reserving, as here, the right of control, the character of control, such as necessarily involved possession in the company, the court therein determining as to the rate held that the property remained vested in the corporation. While the grants were in perpetuity, or nominally in fee, there was nevertheless conveyed only a peculiar sort of easement, a right to burial, possession, control, administration³⁰ of the easement as an entirety being reserved to the corporation, and necessarily so from the nature of its service. Nevertheless I am inclined to take the course I do here, and will enable defendant to have a review, either by rule or on exceptions as is deemed advisable. I shall therefore direct a verdict for plaintiff.

PLAINTIFF'S EXHIBITS.

(No. 1.)—DEED.

10 New York Bay Cemetery Company
 To Thomas H. Buckmaster.
 Dated September 27, 1853.
 Proved October 3, 1853.
 Recorded October 9, 1854, Liber 42, pages 113,
 &c., to wit :

Know all men by these presents that the
 NEW YORK BAY CEMETERY COMPANY

In consideration of one dollar paid to them by T.
 H. Buckmaster,

20 The receipt whereof is hereby acknowledged,
 Do hereby grant, bargain, sell and convey to the
 said T. H. Buckmaster, his heirs and assigns, thirty-
 three hundred and thirty-three lots of land in the
 New York Bay Cemetery, situate in the Township of
 Bergen and County of Hudson and State of New Jer-
 sey, in common and undivided in all the lands as the
 same are laid out on the registered Map or plan of
 the said Cemetery and now remaining unsold and be-
 30 containing in all remaining unsold at this time, thirty
 thousand lots besides streets and avenues as laid out
 on said Map or plan.

To have and to hold the hereinabove granted prem-
 ises to the said T. H. Buckmaster, his heirs and assigns
 forever, for the uses of Sepulture only and to or for
 no other use whatever. Subject, however, to the
 conditions and limitations and with the privileges
 specified in the rules and regulations now made or
 that may hereafter be made and adopted by the
 40 managers of the said Cemetery for the government of
 the lot holders and visitors to the same.

And the said New York Bay Cemetery Company hereby covenant to and with the said T. H. Buckmaster, his heirs and assigns, that the said Company is lawfully seized of the herein above granted premises in the fee simple, and the said Company will warrant and defend the same unto the said T. H. Buckmaster, his heirs and assigns forever, subject to the payment of a mortgage to Jacob Vreeland, and also to a mortgage to Peter Kipp and also to a decree in favor of Samuel B. Cawley on a mortgage to the Freeholders of the County of Bergen and Richard Birdan, all of which mortgages are recorded. 10

In testimony whereof the Secretary of the said Company hath hereunto set his hand and affixed the seal of the said Company, this twenty-seventh day of September, in the year of our Lord One Thousand Eight hundred and fifty-three.

JOS. BELKNAP SMITH,

{ Impression }
of Seal. }

Secretary. 20

STATE OF NEW YORK, }
CITY & COUNTY OF NEW YORK. } ss.

Be it remembered that on this third day of October, 1853, before me R. Goodman, Commissioner duly appointed to take the acknowledgments and proof of deeds, &c., to be recorded in the State of New Jersey, personally appeared Joseph Belknap Smith, who I am satisfied is the Secretary of the New York Bay Cemetery Company, and he being by me duly sworn says he is such Secretary; that he knows the seal of said Company; that the seal affixed to the foregoing deed is the corporate seal thereof; that the same was affixed thereto by order of the directors of said Company, and that he, this deponent, by the like order did sign his name thereto as Secretary of said Company. 30

RICHARD GOODMAN,

Com. for New Jersey. 20

(No. 2.)—DEED.

New York Bay Cemetery Company

To Thomas H. Buckmaster.

Dated October 19, 1853.

Decorded October 9, 1854, in Liber 42, pages
115 and 116.

16 Consideration \$1, and conveys 5737 lots ; is
in form the same as Exhibit No. 1 ; is signed by
Joseph Belknap, Secretary, " in presence of John
T. Hoffman."

(Proof of this deed is as follows) :

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, } ss.

20 Be it known, that on this seventh day of October,
1854, before me, Aaron Ogden, one of the Commis-
sioners for the State of New York, appointed to take
the acknowledgements of deeds, &c., for New Jersey,
by the Governor of that State, personally came John
T. Hoffman, subscribing witness to the foregoing
deed, to me known, who being by me duly sworn did
depote and say that he resided in the City of New
York ; that he knew J. Belknap Smith, the individual
who executed the foregoing deed ; that he was present
and saw the said J. Belknap Smith execute the
same and that the said J. Belknap Smith thereupon
acknowledged that he signed, sealed and delivered
30 the said instrument as his voluntary act and deed as
Secretary of The New York Bay Cemetery Company,
whereupon the said John T. Hoffman became the
subscribing witness thereto.

40 And on this seventh day of October, 1854, before
me personally came Jacob Vreeland, to me known,
who being by me duly sworn, did depote and say
that he was one of the board of directors of the said
Company at the time the above deed was executed ;
that he knows the seal of the said company ; that the
seal affixed to the above deed is the true and proper
corporate seal thereof, and was affixed thereto by

order of the Board of Directors of said Company and that J. Belknap Smith executed the said deed by the same authority.

AARON OGDEN,
Commissioner for New Jersey
In New York,
76 Trinity Building.

10

(No. 3.)—DEED.

Same to Same.

Dated Nov. 9, 1853.

Proved Oct. 7, 1854.

Recorded Oct. 9, 1854, in Liber 42, p. 117, &c.

Signed by J. Belknap Smith, Secty., in presence of John T. Hoffman.

(Form and proof same as Deed No. 2.)

Cons. \$1.00, and conveys 9785 lots.

(No. 4.)—DEED.

30

New York Bay Cemetery Company

To William Rider.

Dated September 27, 1853.

Proved October 3, 1853.

Recorded Oct. 9, 1854, Liber 42, p. 142, &c.

(Signed the same, and form and proof the same as Deed No. 1.)

Cons. \$1.00, and conveys 4000 lots.

40

(No. 5.)—DEED.

William Rider and wife

To William S. Nichols.

Dated April 10, 1854.

Acknowledgment (in proper form) April 11,
1854.

10 Recorded Oct. 9, 1854, Liber 42, p. 146, &c.,
(and is as follows):

THIS INDENTURE made the tenth day of April in the
year one thousand eight hundred and fifty-four

BETWEEN William Rider of the City of New York,
merchant, and Anne Maria his wife, parties of the
first part, and William S. Nichols of the same place,
banker, party of the second part.

20 WITNESSETH for that, whereas, the said William
Rider is siezed and possessed of four thousand lots of
land in the New York Bay Cemetery, situate in the
Township of Bergen and County of Hudson and
State of New Jersey, in common and undivided in all
the lands as the same are laid out on the registered
map or plan of said Cemetery, and remaining
unsold and belonging to said Company said
grounds and Cemetery containing in all remaining
unsold at the time of the execution of the conveyance
by said Cemetery Company to the said William Ri-
30 der of said four thousand lots, thirty thousand lots
or plan. And whereas the said William Rider has
this day covenanted to sell said lots so conveyed to
him by said cemetery company to the said party of
the second part, subject to the lien of certain incum-
brances as hereinafter mentioned.

Now therefore in consideration of the sum of one
dollar lawful money of the United States to them in
hand paid by the said party of the second part at or
before the ensealing and delivery of these presents,
40 the receipt whereof is hereby acknowledged, have
granted, bargained, sold, conveyed and confirmed,

and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part and to his heirs and assigns forever, the above mentioned four thousand lots in the New York Bay Cemetery as conveyed to the said William Rider by said Company by deed bearing date the twenty-seventh day of September, one thousand eight hundred and fifty-three, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, and also all the estate, right, title and interest, dower, right, property howsoever, claim and demand whatsoever as well in law as in equity, of the said parties of the first part, of, in, or to the above mentioned lots and every part and parcel thereof, with the appurtenances, to have and to hold the herein above granted and described lots and premises together with the appurtenances unto the said party of the second part, his heirs and assigns forever, for the uses of sepulture only, and to or for no other use whatever, subject however to the conditions and limitations and with the privileges specified in the rules and regulations now made or that may hereafter be made and adopted by the Managers of the said Cemetery for the government of the lot holders and visitors to the same. And also subject to the payment of a mortgage to Jacob Vreeland and also to a mortgage to Peter Kipp and also to a decree in favor of Samuel B. Cawley on a mortgage to the Freeholders of Bergen and Richard Beadan, all of which mortgages are recorded. And the said William Rider, for himself, his heirs, executors and administrators doth covenant, promise and agree to and with the said party of the second part, his heirs and assigns, that he hath not made, done, committed, executed or suffered any act or acts, thing or things whatsoever whereby or by means whereof the above mentioned and described lots and premises or any part or parcel thereof now are or at any time hereafter shall or may be impeached, charged or incumbered in any maner or way whatsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM RIDER, [L. s.]
ANNA MARIA RIDER. [L. s.]

Sealed and delivered in }
the presence of. }

10 RICHARD GOODMAN.

(No. 6.)—DEED.

William S. Nichols to Thomas H. Buckmaster.
Dated Sept. 28, 1854.

20 Properly acknowledged Sept. 29, 1854.
Recorded Oct. 9, 1854, Liber 42, p. 124, &c.,
(and is as follows):

30 KNOW ALL MEN by these presents, that William S. Nichols, in consideration of one dollar paid to him by Thomas H. Buckmaster, of the City of New York, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell, and convey to the said Thomas H. Buckmaster, his heirs, and assigns, four thousand lots of land in the New York Bay Cemetery, situate in the Township of Bergen, and County of Hudson, and State of New Jersey, in common and undivided, in all the lands as the same are laid out on the registered map or plan of the said cemetery, and all his right, title, and interest in the streets and avenues as laid out on said map.

40 To have and to hold the herein above granted premises to the said Thomas H. Buckmaster, his heirs, and assigns, to be sold or occupied for the uses of sepulture only, and to or for no other use whatever, subject, however, to the conditions and

limitations, and with the privileges specified in the rules and regulations now made, or that may hereafter be made and adopted by the managers of the said cemetery for the government of the lot holders and visitors to the same, subject to the payment of a mortgage to Jacob Vreeland, and also to a mortgage to Peter Kipp, and also to a decree in favor of Samuel B. Cawley, on a mortgage to the freeholders of Bergen, and Richard Berdan, all of which mortgages are recorded. 10

In testimony whereof the said William S. Nichols hath hereunto set his hand and seal this twenty-eighth day of September, in the year of our Lord one thousand eight hundred and fifty four.

W. S. NICHOLS. [L. s.]

20

(No. 7.)—DEED. (Certified copy.)

New York Bay Cemetery Company

To Daniel S. Schenck.

Dated Oct. 8, 1853.

Proven Oct. 8 ———

Recorded Feby. 2, 1854, Liber 34, p. 513, &c.

Cons. \$1.00, and conveys 120 lots.

(In form, same as Deed No. 1.)

Signed by "Joseph Belknap Smith, Secretary," 30

(no witness.)

(Proof as follows) :

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } ss.

Be it remembered that on this eighth day of October, before me, John Chetwood, Jr., Commissioner for, duly appointed to take the acknowledgement and proof of deeds, &c., to be recorded in the State of 40
New Jersey, personally appeared Joseph Belknap

Smith, who I am satisfied is the Secretary of the New York Bay Cemetery Company, and he being by me duly sworn says that he is such Secretary; that he knows the seal of said company; that the seal affixed to the foregoing deed is the seal thereof; that the same was affixed thereto by order of the directors of said company, and that he, this deponent, by the like order did sign his name as Secretary of said
10 Company.

JOHN CHETWOOD, JR.,
Commr.

(No. 8.)—DEED.

20 Daniel S. Schenck to Thomas H. Buckmaster.
Dated Sept. 28, 1854.
Properly acknowledged Oct. 4, 1854.
Recorded Oct. 9, 1854, Liber 42, p. 119, &c.
Cons. \$1.00, and conveys 120 lots.
(In form similar to Deed 6, Nichols to Buckmaster).

30

(No. 9.)—DEED.

New York Bay Cemetery Company
To Samuel M. Woodruff.
Dated February 23, 1853.
Proved October 7, 1854.
Recorded Oct. 9, 1854, Liber 42, p. 131, &c.
Signed by J. Belknap Smith, Secretary.
Witness, John T. Hoffman.
(Form same as Deed No. 1, proof same as
40 Deed No. 2.)
Cons. \$1.00, and conveys 333 lots.

(No. 10.)—DEED.

Louisa D. Woodruff and Lockwood D. F.
Woodruff, widow and heir of Saml. M. Woodruff,
To Thomas H. Buckmaster.

Dated June 21, 1860.

Acknowledged as to the heir-at law and proven
as to the widow, July 21, 1860.

(Similar in form to Deeds Nos. 6 and 8, except
that it is, to wit, "Subject to any existing mort-10
gages thereon.")

Recorded Sept. 12, 1860, Liber 83, p. 29, &c.

Cons. \$1.00, and conveys 333 lots.

(No. 11.)—DEED.

New York Bay Cemetery Company

20

To Charles N. S. Rowland.

Dated October 14, 1853.

Proved October 14, 1853.

Signed by J. Belknap Smith, Secretary. No
witness.

(Similar in form and proof to Deed No. 1.)

Recorded Oct. 9, 1854, Liber 42, p. 136, &c.

Cons. \$1.00, and conveys 500 lots.

30

(No. 12.)—DEED.

Same to Same, as last above.

Dated Sept. 27, 1853.

Proved Oct. 3, 1853.

Signed by Joseph Belknap Smith, Sec'y. No40
witness.

(Similar in form and proof to Deed No. 1.)
 Recorded Oct. 9, 1854, Liber 42, p. 138, &c.
 Cons. \$1.00 and conveys 834 lots.

10 (No. 13.)—DEED.

Charles N. S. Rowland to Thomas H. Buckmaster.

Dated Sept. 28, 1854.

Properly acknowledged Sept. 30, 1854.

Recorded Oct. 9, 1854, Liber 42, p. 126, &c.

(Same in form as Deed No. 6.)

Cons. \$1.00 and conveys 1334 lots.

20

(No. 14.)—DEED.

New York Bay Cemetery Company to Edward S. Inness.

Dated Oct. 1, 1853.

Proved Oct. 1, 1853.

Signed, "Joseph Belknap Smith, Secretary."

No witness.

30

(Similar in form and proof to Deed No. 1, except it is not stated to be subject to mortgage encumbrance.)

Recorded Oct. 9, 1854, Liber 42, p. 139, &c.

Cons. \$1.00 and conveys 500 lots.

40 (No. 15.)—DEED.

Edward S. Inness to Thomas H. Buckmaster.

Dated Sept. 28, 1854.
 Acknowledged Sept. 30, 1854.
 Recorded Oct. 9, 1854, Liber 42, p. 123, &c.
 (Similar in form to Deed No. 6.)
 Cons. \$1.00, and conveys 500 lots.

 10

(No. 16.)—DEED.

New York Bay Cemetery Company to James
 G. Miner.

Dated Nov. 3d, 1853.

Signed "J. Belknap Smith, Secty." No wit-
 nesses.

Proved Oct. 7, 1854.

(Similar in form to Deed No. 1. Proof same
 as Deed No. 2.)

Recorded Oct. 9, 1854, Liber 42, p. 129, &c.

Cons. \$1.00 and conveys 712 lots.

No. 17.)—DEED.

30

James G. Miner to Thomas H. Buckmaster.

Dated Sept. 28, 1854.

Acknowledged Sept. 28, 1854.

Recorded Oct. 9, 1854, Liber 42, p. 120, &c.

(Similar in form to Deed No. 6.)

Cons. \$1.00, and conveys 712 lots.

 40

(No. 18.)—DEED.

New York Bay Cemetery Company
To William H. Leonard.

Dated Sept. 27, 1853.

Signed "Joseph Belknap Smith, Secretary."

No witness.

Proved Oct. 3, 1853.

(Similar in form and proof, to Deed No. 1.)

Recorded Oct. 9, 1854, Liber 42, p. 141, &c.

Cons. \$1.00, and conveys 333 lots.

(No. 19.)—DEED.

William H. Leonard to Thomas H. Buckmaster.

Dated Sept. 28, 1854.

20

Acknowledged Oct. 5, 1854.

(In form, similar to Deed No. 6.)

Recorded Oct. 9, 1854, Liber 42, p. 121, &c.

Cons. \$1.00, and conveys 333 lots.

30 (No. 20.)—DEED.

New York Bay Cemetery Company
To Ethelbert R. Billings.

Dated Oct. 17, 1853.

Signed "J. Belknap Smith, Secretary." No
witness.

Proved Oct. 17, 1853.

(Similar in form and proof to Deed No. 1.)

Recorded Oct. 9, 1854, Liber 42, p. 135, &c.

Cons. \$1.00, and conveys 3000 lots.

40

(No. 21.)—DEED.

Same to Same (as last above.)

Dated Oct. 7, 1853.

Proved Oct. 12, 1853.

(In form, signature and proof, same as Deed
No. 1.)

Recorded Oct. 9, 1854, Liber 42, p. 133, &c.

Cons. \$1.00 and conveys 813 lots.

10

(No. 22.)—DEED.

Ethelbert R. Billings to Thomas H. Buckmas-
ter.

Dated Sept. 28, 1854.

Acknowledged same day.

20

(Similar in form to Deed No. 6.)

Recorded Oct. 9, 1854, Liber 42, p. 127, &c.

Cons. \$1.00 and conveys 3813 lots.

(No. 23.)—DEED.

30

New York Bay Cemetery Company
To Thomas H. Buckmaster, and others.

Dated Sept. 26, 1854.

Recorded Oct. 9, 1854, in Liber 42, p. 144, &c.,

(And is as follows):

Know all men by these presents, that the New
York Bay Cemetery Company, in consideration of
one dollar, paid to them by Thomas H. Buckmaster
William S. Nichols, Ethelbert R. Billings, William⁴⁰
H. Leonard, Samuel M. Woodruff, Edward S. Innes

Charles N. S. Rowland, James G. Miner, and Daniel S. Schneck, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey, and confirm to the said parties, their heirs, and assigns, all the lots of land in the New York Bay Cemetery, situate in the Township of Bergen, and County of Hudson, and State of New Jersey, as the same are laid out on the registered map or plan of the said cemetery, and remaining unsold, and belonging
 10 to said company, and also the streets and avenues as laid out on said map, on the day of in the year of our Lord one thousand eight hundred and fifty-three, subject to the right of the public in said streets and avenues as at present existing, said grounds and cemetery containing in all, remaining unsold at this time, thirty thousand lots, besides streets and avenues as laid out on said map or plan.

To have and to hold the herein above granted
 20 premises to the said Thomas H. Buckmaster, William S. Nichols, Ethelbert R. Billings, William H. Leonard, Samuel M. Woodruff, Edward S. Innes, Charles N. S. Rowland, James G. Miner, and Daniel S. Schneck, their heirs and assigns forever, for the uses of sepulture only, and to or for no other use whatever, subject however, to the conditions and limitations, and with the privileges specified in the rules and regulations now made or that may hereafter be made and adopted by the managers of the
 30 said cemetery for the government of the lot holders and visitors to the same.

The said premises are subject to the payment of a mortgage to Jacob Vreeland, and also to a mortgage to Peter Kipp, and also to a decree in favor of Samuel B. Cawley, on a mortgage to the freeholders of Bergen, and Richard Berdan, all of which mortgages are recorded.

This deed is executed to confirm the title to thirty thousand lots in said cemetery, conveyed to the
 40 parties of the second part as tenants in common by the said company by several deeds.

In testimony whereof, the secretary of the said company hath hereunto set his hand and affixed the seal of the said company this 26th day of September, in the year of our Lord one thousand eight hundred and fifty-four.

T. H. BUCKMASTER,
Secretary.

{ Impression }
 of Seal. }

10

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, } ss.

Be it remembered, that on this twenty-eighth day of September, eighteen hundred and fifty-four, before me, Aaron Ogden, one of the commissioners appointed to take the acknowledgments of deeds, &c., to be recorded in New Jersey by the Governor of said State, personally appeared Thomas H. Buckmaster, to me known, who, being by me duly sworn,²⁰ did depose and say that he resided in the City of New York; that he is the secretary of the New York Bay Cemetery Company, and that he signed, sealed, and delivered the foregoing instrument as his voluntary act and deed as secretary of said company. Said Buckmaster further said that the seal affixed to the foregoing instrument is the true and proper corporate seal of the said company, and was affixed thereto by the authority of the board of directors of said company, and that he executed the said deed³⁰ by the same authority.

AARON OGDEN,
Commissioner for New Jersey in New York.

(No. 24.)—DEED.

New York Bay Cemetery Company to Lansing Zabriskie.

Dated Jan'y 2, 1871.

Proved Jan'y 2, 1871.

Recorded July 20, 1871, in Liber 231, pages 34, &c. (and is as follows, to wit) :

10 Know all Men by these Presents, That THE NEW YORK BAY CEMETERY COMPANY OR ASSOCIATION, In consideration of Five $\frac{00}{100}$ dollars, paid to them by Lansing Zabriskie, of Jersey City, in the State of New Jersey, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey to the said Lansing Zabriskie, his heirs and assigns, seventy-five (75) lots of land in the New York Bay Cemetery, situate in the Township of Greenville, and
 20 County of Hudson, and State of New Jersey, which lots are delineated and laid down on the register map or plan of the said cemetery by the numbers of eleven to thirty-two (11 to 32), fifty-one to seventy-three (51 to 73), seventy-five (75), ninety-one to one hundred and two (91 to 102), one hundred and thirty-nine to one hundred and forty-two (139 to 142), one hundred and eighty-seven to one hundred and ninety (187 to 190), one hundred and seventy-nine to one hundred and eighty-two (179 to 182), one hundred and seventy-five to one hundred and seventy-seven (175 to 177), two hundred and sixty-five (265), and three hundred and five (305), all inclusive, in
 30 Section Q, South, between Acacia and Laurel avenues, and containing eighty superficial feet in each lot.

To have and to hold the herein above granted premises to the said Lansing Zabriskie, his heirs and assigns forever, for the uses of sepulture only, and to or for no other use whatever. Subject, however, to the conditions and limitations, with the
 40 privileges specified in the rules and regulations now made or that may hereafter be made and adopted by

the managers of the said cemetery, for the government of the lot holders and visitors to the same. And the said New York Bay Cemetery Company hereby covenants to and with the said Lansing Zabriskie, his heirs and assigns, that the said company is lawfully seized of the herein above granted premises in the fee simple, and that the said company will warrant and defend the same unto the said Lansing Zabriskie, his heirs and assigns forever.

In testimony whereof, the secretary of the said company hath hereunto set his hand and affixed the seal of the said company this second day of January, in the year of our Lord one thousand eight hundred and seventy-one.

GEORGE BUCKMASTER,

Secretary. [SEAL.]

Countersigned by

GEORGE BUCKMASTER,

Register, *pro tem.*

26

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, } ss.

Be it remembered, that on this second day of January, 1871, before me, Charles Price, Commissioner, duly appointed to take the acknowledgement and proof of deeds, &c., to be recorded in the State of New Jersey, personally appeared George Buckmaster, who, I am satisfied is the secretary of the New York Bay Cemetery Company, and he, being by me duly sworn, says that he is such secretary; that he knows the seal of said company; that the seal affixed to the foregoing deed is the corporate seal thereof; that the same was affixed thereto by order of the directors of said company; that that he, this deponent, by the like order did sign his name thereto as secretary of said com-

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40

pany. All which I certify under my
hand and official seal.

CHARLES PRICE, [SEAL.]
Commissioner for New Jersey.

{ [50c. Int. Rev. stamp. }
cancelled. }

10

(No. 25.)—DEED.

New York Bay Cemetery Company to Lan-
sing Zabriskie.

Dated Jan'y 2, 1871.

Proved Jan'y 2, 1871.

Recorded August 9, 1872, in Liber 245, pages
20 231, &c.

Consideration, \$5.00.

Conveys 70 lots in Section K, North.

Signed and "countersigned" the same, and
the proof and form the same as Exhibit No. 24

30

(No. 26.)—DEED.

New York Bay Cemetery Company to Lansing
Zabriskie.

Dated Jany. 2, 1871.

Proved Jany. 2, 1871.

Recorded June 17, 1872, in Liber 244, pages
40 199, &c.

Consideration, \$5.00.

Conveys 400 lots in Section L, North.

Signed and "countersigned" the same, and the proof and form the same as in Exhibit No. 24.

(No. 27.)—DEED. 10

New York Bay Cemetery Company to Lansing Zabriskie.

Dated Jany. 2, 1871.

Proved Jany. 2, 1871.

Recorded August 9, 1872, in Liber 245, pages 230, &c.

Consideration, \$5.00.

Conveys 52 lots in Section K, North.

Signed and "countersigned" the same, and the proof and form the same as Exhibit No. 24 20

(No. 28.)—DEED.

New York Bay Cemetery Company to Lansing Zabriskie.

Dated Jany. 2, 1871.

Proved Jany. 2, 1871.

Recorded August 9, 1872, in Liber 245, pages 240, &c.

Consideration, \$5.00.

Conveys 83 lots in Section I, North.

Signed and "countersigned" the same, and the proof and form the same as Exhibit No. 24

(No. 29.)—DEED.

New York Bay Cemetery Company to Lansing Zabriskie.

Dated Jan'y 2, 1871.

Proved Jan'y 2, 1871.

Recorded August 9, 1872, in Liber 245, pages 233, &c.

13

Consideration, \$5.00.

Conveys 100 lots in Section J, South.

Signed and "countersigned" the same, and the form and proof the same as Exhibit No. 24.

20 (No. 30.)—DEED.

New York Bay Cemetery Company to Lansing Zabriskie.

Dated Jan'y 2, 1871.

Proved Jan'y 2, 1871.

Recorded August 9, 1872, in Liber 245, pages 235, &c.

Consideration, \$5.00

Conveys 141 lots in Section J, north.

30 Signed and "countersigned" the same, and the proof and form the same as Exhibit No. 24.

(No. 31.)—DEED.

Lansing Zabriskie to Thomas H. Buckmaster.

Dated June 22, 1871.

40

Acknowledged June 31, 1871.

Recorded June 8, 1885, in Liber 403, pages 379, &c.

Cons. \$5.00. (Bargain and Sale Deed).

Grants, bargains, sells, aliens, remises, releases, conveys and confirms in fee "all those fourteen hundred and eleven (1411) lots of land in the New York Bay Cemetery, &c., which lots are designated and laid down on the register map or plan of the said cemetery, &c., among which the lots claimed by¹⁰ plaintiff, being designated by the lot, numbers and sections where situated," * * * "and containing eighty superficial feet in each lot, for the uses of sepulture only, and to or for no other use whatever, subject, however, to the conditions and limitations and with the privileges specified in the rules and regulations now made, or that may hereafter be made and adopted by the managers of the said company for the government of the lot holders in, and visitors to the same," * * * "It being intended here-²⁰ by to convey only such title as is vested in the party of the first part hereto, by the said eighteen deeds of conveyance; without any covenant by implication or otherwise by said party of the first part as to the title or ownership thereof."

30

(No. 32.)—CERTIFIED COPY OF WILL
Of Thomas H. Buckmaster.
Dated Dec. 9, 1871.
(First and last clause).

40

(No. 33.)—DECREE IN CHANCERY.

Dated Jan'y 13, 1885.

In partition, John W. Buckmaster and others
vs. James Buckmaster and others.

10 (No. 34.)—MAP. (Not on file.)

(No. 35.)—BOOK. Lot Book.

20

30

40

DEFENDANT'S EXHIBITS.

(No. 1.)

An Act to Incorporate the New York Bay¹⁰
Cemetery Association.

Pamphlet Laws, 1850, p. 194, &c.

(No. 2.)—DEED.

BENJAMIN H. BROOMHEAD	} Deed.	20
to		
THE NEW YORK BAY CEM-	} Dated August 30, 1850.	
ETERY COMPANY.		
	} Recorded October 3,	
	} 1850, in said Hudson	

County Clerk's office (now Register's office), in Liber 17 of Deeds for said county, on pages 259, &c. Cons. \$1.00 "and certain other benefits and considerations hereinafter mentioned and contained." Conveys to said company, their successors and assigns forever, to wit, "all the following described premises, situate, lying and being in the said Town-³⁰ship of Bergen, in the County of Hudson and State of New Jersey, described as follows, that is to say, commencing at the westerly side of the Morris Canal on the division line between Mathew Armstrong and the grounds enclosed by the said cemetery company and lately owned by Jacob Vreeland, Esquire; thence north twenty-nine and one-half degrees west fourteen chains and thirty-eight links to the west side of the Bergen Road; thence south fifty-one degrees west six chains and fifty-one links; thence north) twenty-nine degrees five minutes west eight chains

and seventy-seven links ; thence south forty-one and one-half degrees west eight chains and sixty-four links ; thence north thirty-two degrees west eighteen chains and eighty-two links ; thence south fifty-one degrees west thirteen chains and twenty-two links to a lane ; thence south twenty-six and one-half degrees east forty-five chains and thirty-four links to the west line of the said canal ; thence north forty-three and one-half degrees east along said westerly
 10 line of the said canal to the place of beginning, containing one hundred acres of land, more or less. Subject to the conveyances heretofore executed by the said party of the first part, of tracts, pieces and parcels of land in said premises as and for burial lots." * * * Habendum, to the said party of the second part, their successors and assigns forever, "for the uses and purposes mentioned and contemplated in an act of the Legislature of New Jersey,
 20 entitled 'An Act to incorporate the New York Bay Cemetery Association,' approved March 5th, 1850."
 * * * "The by-laws of said company, a copy of which are hereunto annexed, passed and adopted by the said company the thirtieth day of August, one thousand eight hundred and fifty, and taken and considered as part of this deed and form the consideration thereof." (Covenant against grantor.)

Signed and sealed by Benj. H. Broomhead, and also signed by Joseph Belknap Smith, Secretary of
 30 the New York Bay Cemetery Company, and seal of said company affixed.

August 30, 1850, in New York city, acknowledged in proper form by Benj. H. Broomhead, and corporate seal proved by said Secretary before Richard Goodman, Commissioner, &c., for New Jersey in New York.

(Said by-laws incorporated in the Deed are as follows, to wit) :

40 "By-laws to be incorporated with the deed of the proprietors' lands to the New York Bay Cemetery Company :

WHEREAS, George Wood, James T. Leete, Joseph Belknap Smith, Benj. H. Broomhead, Cheney H. Housekeeper, Samuel B. Cawley, Peter Dwyer, John S. Wood and Joseph H. Hedges are about to convey or cause to be conveyed to the New York Bay Cemetery Company certain lands and tenements, with the improvements thereon, which constitute the cemetery grounds of said company, and the said parties are entitled to compensation therefor, and for that purpose it is declared as follows : 10

The proceeds of the sales of lots, sub-lots and vault lots in said cemetery and the income from burials and any other income therein shall belong and appertain to the aforesaid parties and their heirs, executors, administrators and assigns until all of said premises so to be conveyed and such other grounds as they may hereafter convey to said company shall be sold and fully paid by the purchasers.

The proceeds and income aforesaid shall be divided into nine hundred and sixty shares, for which said company shall issue scrip or certificates to the said proprietors. Each certificate may be issued for any number of shares or 960th parts, but not for a less proportion each than one share or 1-960th of such proceeds and income. 20

The said certificates shall be transferable on books to be kept by the company for the registry and transfer of said certificates, which shall be open at all times during business hours. 30

SECOND. The price of sub-lots, until the shareholders, shall be as follows :

\$25	each	for	lots	on	the	avenues.			
22	"	"	the	second	lots	from	the	avenues.	
20	"	"	"	third	"	"	"	"	
18	"	"	"	fourth	"	"	"	"	
15	"	"	all	other	lots,	or	sub-lots,	except	vault

lots, the price of which may be regulated by the shareholders. 40

The said prices may be increased one hundred per cent. by the shareholders after one-third of the lots on said grounds have been sold at the above prices.

THIRD. All debts, incumbrances and expenses of said company and improvement of grounds, erections of edifices and salaries of officers shall be paid out of the aforesaid proceeds and income before any part thereof shall be divided among the shareholders.

10 FOURTH. The salaries to be paid to the officers of the company shall not exceed the sum of \$5000 annually in the aggregate.

FIFTH. The prices of burial and all other charges and the services of the employees of the company in that respect shall be regulated by the shareholders who it is declared are entitled to income thereupon.

20 SIXTH. The shareholders shall be entitled to inspect the books, papers and records of the company at the regular meetings of the Directors and on the first Mondays in every month.

SEVENTH. The expenditures contemplated by the plans of the company shall be carried out by the shareholders and under their management and direction as fast as the said proceeds and income realized 30 by the company will justify; all further improvements and erections of buildings shall be made only when directed by the shareholders, and shall be so made under their management and authority.

EIGHTH. These by-laws shall not be altered without a concurrence of the shareholders, and are to be taken and considered as part of the deed for the said lands and tenements to be executed to the company on the part of said proprietors thereof by Benj. H. 40 Broomhead.

OFFICE OF THE NEW YORK BAY }
 CEMETERY COMPANY, }
 NEW YORK, August 30th, 1850. }

I hereby certify that the within named by-laws and deed were accepted and adopted by the New York Bay Cemetery Company, the day and year above written.

[L. s.] Witness my hand, &c., and the seal of
 said company, &c. 10
 JOS. BELKNAP SMITH,
 Secretary."

(No. 3.)—SUPPLEMENT.
 Pamphlet Laws 1854, p. 516.

20

(No. 4.)
 An Act concerning Cemetery Associations and
 regulating the election of Trustees.
 Approved April 3, 1878.
 Pamphlet Laws, 1878, p. 256, &c.

30

(No. 5.)—SUPPLEMENT.
 Pamphlet Laws, 1881, p. 273.

40

(No. 6.)—AMERICAN STANDARD.

Jan'y 12, 1863.

(3d page, 2d column).

(Notice, to wit).

“ Election Notice :

10 The annual election for eleven Trustees of the
New York Bay Cemetery Company. will be held
at the office of the company, 195 Broadway,
New York, on Tuesday, the 13th day of January,
1863.

THOMAS H. BUCKMASTER,

de 29-2w

Secretary.”

20 (No. 7.)—AMERICAN STANDARD.

January 10, 1865.

(3d page, 1st column).

(Notice, to wit):

“The annual election for eleven Trustees of
the New York Bay Cemetery Company will be
held at the office of the cemetery on Tuesday,
the 10th day of January, 1865, at 193 Broad-
way, New York.

THOMAS H. BUCKMASTER,

30

dec 27th, 1864-td.

Secretary.”

(No. 8.)—AMERICAN STANDARD.

January 2, 1866.

40

(3d page. 1st column).

(Notice, to wit :)

“ OFFICE, NEW YORK BAY CEMETERY, }
195 BROADWAY, NEW YORK, }
December 26th, 1865. } ”

The annual election for eleven Trustees of the New York Bay Cemetery Company, will be held at the office of the cemetery, on Tuesday, the 9th day of January, 1866.

THOMAS H. BUCKMASTER, 10
Secretary.”
27d-2w

(No. 9.)—AMERICAN STANDARD.

January 3. 1868. 20
(2d page, 2d column).
(Notice, to wit :)

“ OFFICE OF NEW YORK BAY CEMETERY, }
195 BROADWAY, (ROOM No. 8), }
NEW YORK, Jan. 1st, 1868. } ”

The annual election for eleven Trustees of the New York Bay Cemetery Company will be held at the office of the company, on Tuesday, the 14th day of January, 1868. 30

J. H. BUCKMASTER,
Secretary.”
1-jan-2w

(No. 10.)—AMERICAN STANDARD.

January 2, 1869.
(2d page, 5th column.)
(Notice, to wit):

“OFFICE OF THE NEW YORK BAY CEMETERY, }
195 BROADWAY (ROOM NO. 8), }
NEW YORK, DEC. 29. } ”

10 The annual election for eleven Trustees of the
New York Bay Cemetery Company, will be held
at the office of the company on Tuesday the
twelfth day of January, 1869.

T. H. BUCKMASTER,

29de-2w

Secretary.”

20

(No. 11.)—AMERICAN STANDARD.

January 4, 1870.
(2d page, 3d column.)
(Notice, to wit):

OFFICE OF THE NEW YORK BAY CEMETERY, }
195 BROADWAY (ROOM NO. 8), }
NEW YORK, 29 DEC., 1869. }

30 The annual election for eleven Trustees of the
New York Bay Cemetery Company will be held
at the office of the company on Tuesday, the
eleventh day of January, 1870.

GEORGE BUCKMASTER,

4ja-1w

Secretary, pro tem.

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(No. 12.)—"RECORDS, to wit :

Minute book of the N. Y. Bay Cemetery Co. from April 5, 1878. (See printed case, p. 63.)

Extract from the minutes of meeting of the Board of Trustees, held May 27, 1878, pages 13, 14, 15, 16, 17, 18 and 19 of the minutes, as follows, to wit :

"Committee on Rules and Regulations presented to the Board of Trustees rules and regulations for the government of the cemetery, which, on motion, was acted upon by sections which were as follows, viz.

RULES AND REGULATIONS OF THE N. Y. BAY CEMETERY Co.

All persons may have access to the public walks, avenues and grounds from sunrise to sunset on all days by observing the following rules :

1. No riding or driving will be allowed faster than a walk.
2. No firearms will be allowed on the grounds excepting those brought by military or other organizations for the purpose of firing salutes, and officers of the law.
3. No person having refreshments will be admitted.
4. No dog shall be admitted, nor may any horse be left unfastened.
5. No money shall be demanded by any attendant at the gate or grounds from visitors.
6. No children will be admitted unless attended by some proper person, who will be responsible for their conduct and obedience to the rules.
7. All persons are prohibited from plucking any flowers, breaking or injuring any tree, shrub, or plant, either growing wild or cultivated, or entering any individual inclosure, without leave of the owner.
8. All persons are prohibited from writing upon,

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defacing or injuring any headstone, monument, railing, fence or other structure in or belonging to the cemetery.

9. Any person disturbing the quiet and good order of the place by noise or other improper conduct, or who shall violate any of the rules, will be compelled instantly to leave the grounds.

10. It is of the utmost importance that there should be a strict observance of all the proprieties due the place, whether embraced in these regulations or not, as no impropriety will be permitted to pass unnoticed. Proper decorum should at all times characterize the place sacredly devoted and consecrated to the interment of the dead.

11. All lot owners shall on or before the first day of April in each year, pay to the secretary or superintendent of the grounds, taking their receipt for the same, their assessment on lot or lots, at the following rates, viz :

One lot	\$2.00
Two lots	3.00
Three lots	4.00
Four lots	5.00

And all additional lots \$1.00 each. Same to constitute a fund to be used for the purpose of keeping the grounds and avenues in proper order. Said amount will be held as a charge against the lot or lots.

12. No burial shall be allowed in any lot against which there shall appear any charge due and unpaid.

TRANSFER OF BURIAL LOTS.

1. No sale or transfer of a burial lot, or right of interment by the original or any subsequent owner thereof, shall be valid until an entry thereof shall be made on the books of the company.

2. The charge for making the entry of a transfer shall be three (3) dollars.

INTERMENTS.

1. All interments will be subject to the following charges, which must be paid at the office of the secretary or to the superintendent before the same is made. 10

Opening Graves—usual depth, including sodding :
 Persons over ten (10) years \$5.00
 Children ten (10) years or under 4.00
 Extra depth according to extra labor.

When more than one interment is made at the same time, in the same grave, half-rates must be paid for each additional interment.

2. No disinterment will be allowed in any lot or 20 grave, without an order from the owner or owners thereof.

No disinterment shall be made, or any body be removed from the receiving tomb (or vault) without a written permit from the secretary.

3. Drivers of carriages, employed at funerals, are required to remain in their seats, or close by their respective carriages, during the performance of funeral ceremonies, and their employers will be held accountable for their conduct while in the cemetery. 30

4. The size of coffin on top, or if in a box, should be particularly mentioned when leaving the order for the opening of the grave. And when interments are to be made in private lots, location of the grave should be also stated with great care, otherwise the superintendent will not be responsible for the error committed, and the parties will be compelled to pay for a new opening, if required.

VAULT CHARGES.

1. The charges for placing bodies in the receiving vault will be as follows, viz :

An adult for three (3) months..... \$10.00
 A child ten (10) years or under..... 8.00

10 2. If removed before the expiration of three (3) months, half of the above charges will be returned.

3. Two (2) dollars per year will be charged for every year or part of a year after the expiration of the first three (3) months.

IMPROVEMENTS.

1. All workmen employed in the improvement of lots, construction of vaults, erection of monuments,
 20 headstones, etc., must be subject to the direction and control of the officers of the cemetery. Masons and stone-cutters are required to lay planks on the paths over which heavy materials are to be moved, in order to protect them from injury. Such gardeners as are unknown must procure an order in writing from the lot owner who employs them before they can be permitted to work.

2. All rubbish made by gardeners must be removed immediately by them to such place as the
 30 superintendent shall direct.

EXCAVATIONS.

1. To protect the grounds, and especially improved lots, from injury, also to insure proper foundations, all excavations for vaults, monuments, headstones and stoops will be made by the cemetery company at the expense of the owners.

40 2. No vault to be erected either partially or wholly above ground, until plans and specifications

for the same shall have been inspected and approved by the Board of Trustees.

STEPS TO LOTS.

No steps to lots may be built, except special permission be obtained from the officers of the cemetery. The steps, in all cases, must be of solid-cut stone, and placed on a solid-stone or brick foundation, not less than three (3) feet deep, built with good cement.

FOUNDATIONS.

Foundations for monuments and headstones over two (2) feet in height, must be built of solid masonry, with good cement, and be to the depth of the grave. Headstones, two (2) feet or less, must have foundations three (3) feet deep, commencing on the bottom with flat stone not less than two (2) feet six (6) inches long. All foundations, where the coffin comes in the way, must be built with brick piers extending above the box; then a flat strong stone, laid across from pier to pier. All foundations of this kind must be built with the best cement and in the strongest manner.

All monuments, headstones, posts for inclosures, etc., with their bases and foundations—both above and below ground—must be placed on the lot itself, and in no case will any improvement be allowed to extend on the adjoining lot.

HEADSTONES.

1. No slab will be allowed, unless placed in a horizontal position. All headstones with bases must be well fastened with galvanized iron, brass or copper dowels, well leaded and neatly fitted.

2. Persons having monuments, headstones, etc., already erected and not secured according to these rules and who neglect to have them so secured, will be held responsible for all damage which may be done by the falling of said monuments, headstones, on or against those belonging to other parties.

ENCLOSURES.

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1. All lots owned by different individuals in connection must be enclosed at one time and in a uniform manner.

2. No lot can be enclosed without a permit from the office at the cemetery.

3. All posts and bars must be fastened with lead. Brimstone will not be allowed. The bars must be inserted into the posts not less than one and one-half ($1\frac{1}{2}$) inches; all iron work must be well gal-
20 vanized.

4. If brass tubes are used they must be not less than one eighth ($\frac{1}{8}$) to one quarter of an inch ($\frac{1}{4}$) in thickness.

5. All posts without foundations must be placed not less than three (3) feet in the ground.

6. Posts less than three (3) feet in the ground must have suitable foundations, and no posts will be allowed less than two (2) feet in the ground.

7. No wall exceeding eighteen (18) inches in height
30 above the surface, nor other enclosure exceeding three (3) feet six (6) inches in height, may be erected without special permission.

8. Wooden or hedge enclosures or lettered boards designating graves will not be allowed.

9. Persons enclosing lots or making other improvements upon them after they are graded will be charged the cost of putting again in order as follows, viz:

40 One lot \$1.00
Two lots 1.50

Large plots and vaults according to the labor required.

GRADE OF LOTS.

1. To insure the proper regulation of the grounds, the grade of lots, as well as fences, will be determined by the committee on grounds of the cemetery.

2. The trustees reserve to themselves the right of preventing or removing any erection or enclosure¹⁰ which they may consider injurious to the immediate locality, or prejudicial to the general appearance of the cemetery, and of removing or pruning any trees or shrubbery which may mar the effect and beauty of the scenery, or which will encroach upon or interfere with other plots or graves.

Nothing will be allowed to pass out the gates of the cemetery without a written permit from the party whose grounds the same is removed, subject to the supervision of the superintendent.²⁰

These rules and regulations shall only be amended or suspended by a majority of the trustees.

All of which on motion were adopted.

At the meeting held June 3, 1878, "the minutes of the last meeting" (May 27, 1878) "were read, and on motion approved," and the Committee on Rules and Regulations were authorized to have the rules and regulations printed for the use of lot owners.³⁰

ASSIGNMENT OF ERRORS.

Afterwards, that is to say, on the third day of June, in the year of our Lord one thousand eight hundred and eighty-six, in the Court of Errors and Appeals, in the last resort in all causes of the State of New Jersey, come the said New York Bay Cemetery Company, by William A. Lewis, their attorney, and say that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in giving the verdict and the judgment aforesaid, there is manifest error :—

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1st. In this, that the said Justice before whom the said cause was tried below admitted the question of plaintiff (printed case, page 20), to wit, "How are these sections marked or identified, as sections, on the ground?" The defendant, in objecting to the question, submitted that the location of the said lots are by a map.

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2d. And also there is error in this, that the said Justice permitted the question to be asked of witness by plaintiff (page 21), as follows: "Look at the deed I now show you (No. 24), being a deed from the New York Bay Cemetery Company to Lansing Zabriskie of 75 lots, Section Q, South, and state whether you can take that deed and go to the New York Bay Cemetery and locate those lots," to which question defendant objected, saying "the location of these lots must be by the map, that that is the best

40 evidence.

3d. And also there is error in this, that the said Justice permitted the question by plaintiff to be asked of witness and answered, Question (on page 22), to wit: "Have you ever examined that cemetery and the lots in it in order to ascertain which the 30,000 lots were that are described in the deed from the New York Bay Cemetery Company to Billings and others, which is in evidence and marked No. 23, and which refers to 30,000 lots remaining unsold at the time of said deed, and also for the purpose of ascertaining whether the lots that are described in these deeds to Lansing Zabriskie, which I have just shown you, were a part of the thirty thousand lots mentioned in the deed to Billings and others?"¹⁰

4th. And also there is error in this, that the said Justice permitted the witness, Augustus M. Kattenstroth, to answer the said questions objected to²⁰ (pages 20, 21, 22 and 23), and refused to overrule and strike out the answers of witness to said questions. (See pages referred to for the answers.)

5th. And also there is error in this, that the said Justice admitted in evidence the book offered by counsel for plaintiff. (See pages 66 and 67, describing the book.)

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6th. And also there is error in this, that the said Justice overruled the objection of defendant, which required written evidence of a "resolution," and permitted plaintiff to go into secondary proof of the contents of a resolution claimed by plaintiff's counsel to have been adopted at an alleged meeting in Jersey City. (See pages 68, 69 and 70, printed case.)

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7th. Also there is error in this, that the said Justice overruled defendant's objection to the following question to witness by plaintiff, to wit: "Q. State the substance of it," (that is, of the said resolution described in the 6th assignment of errors), "according to the best of your recollection," and in permitting the witness to answer said question, which was also stated to the witness by plaintiff's counsel, in the form following, to wit, "Give us your recollection of
10 the tenor of the resolution," (see printed case, pages 70 and 71); and also there was error in the Court's receiving and permitting the answer of witness as to "contents" and "tenor" of said resolution to stand as evidence in the case.

8th. And also there is error in this, that the said Justice admitted in evidence the several deeds which were offered by the plaintiff, and which in each instance
20 were objected to by the defendant at the time of their offer, the said defendant stating at the time of the offer of each deed the objection to the same (as will appear by the record), and respecting which ruling was reserved until the evidence on both sides had all been offered. (See printed case, pages 7 to 16, both inclusive—some 32 deeds in all—the offer, objections and rulings there appearing.) (See page 71 for final ruling and exception): Whereas, according to law,
30 the rules of evidence and the practice of the Supreme Court, the said Justice should have sustained the objections interposed by defendant to said deeds, and should have refused to admit in evidence in this case each one and all of said deeds.

And this said assignment of error respecting the ruling of the said Justice as to the said several deeds is intended to be as specific and comprehensive as the said ruling which is alleged for error.

40 9th. And also there is error in this, that although

the defendant four several times moved to non-suit plaintiff, for the reasons then offered, (see pages 18, 19, 25, 26 and 71), the said Justice denied the motion to non-suit plaintiff, and refused to allow a non-suit to be entered.

10th. And also there is error in this, that the said Justice refused the request of defendant to direct a¹⁰ verdict in favor of the defendant and against the plaintiff, and declined to so direct a verdict.

11th. And also there is error in this, that on motion of plaintiff, that the Court direct a verdict in favor of plaintiff, the said Justice granted the motion of plaintiff, and directed that a verdict be entered against the defendant and in favor of the plaintiff.²⁰ (See ruling, pages 72 and 73.)

12th. And also there is error in this, that the judgment aforesaid, in form aforesaid, was given for the said Clara Buckmaster against the said New York Bay Cemetery Company, whereas, by the law of the land, the said judgment ought to have been given for the said New York Bay Cemetery Company against the said Clara Buckmaster.³⁰

And the said New York Bay Cemetery Company prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the said proceedings being, may be reversed, annulled, and altogether holden for naught, and that the said New York Bay

Cemetery Company, plaintiff in error, may be restored to all things it has lost by occasion of the said judgment.

WILLIAM A. LEWIS,
Attorney and Counsel
for Plaintiff in Error.

MICHAEL T. NEWBOLD,
Of Counsel with
Plaintiff in Error.

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Joinder in Error in usual form.

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