

In the Municipal Institutions Act of 1873, 36 Vict. ch. 48, sec. 379, sub-sec. 7, an exception to the general power to acquire or purchase for a public cemetery, and "as well within as without the municipality," conferred by the early enactment, was made in these words, "but not within any city, town, or incorporated village;" and for many years thereafter the law remained against cemeteries being established in cities, towns, or incorporated villages. So that there existed that which was substantially a prohibition against the establishment of municipal cemeteries in towns, cities, and incorporated villages, with also a provision that a cemetery so established, although without the municipality, should become part of it and should cease to be part of the municipality to which it formerly belonged, both contained in the one sub-section of an enactment. Having regard, however, to the obvious purposes of the legislation, these things are not substantially inconsistent the one with the other. The object of the legislation was to bring the municipal cemetery, when without the territorial limits of the municipality owning it, completely under its control as if it were within such limits.

The fact that the cemetery in question is near to the city of Chatham makes no difference; the question involved would be precisely the same no matter how far it might be from the city. There is nothing to indicate any intention that the cemetery is to be treated as if tacked on to the outskirts of the city so as to extend the city's territorial limits. Nor is there anything in any part of the legislation affecting the question which requires that it should be held that the cemetery is a city without the city; or that there are to be two separate and distinct parts of the one city. Full effect is fairly given to all the purposes and words of the Legislature if the cemetery be treated, in all things affected by the legislation respecting cemeteries, as if it were within the city. So that the legislation respecting municipal cemeteries does not necessarily sustain the applicants' contention.

Nor does the legislation more directly affecting the question of liability. It is, as I have said, only regarding boundary-lines between a county and a city that the liability contended for in this case exists. No one would, I am sure, think of calling the boundaries of the cemetery boundary-lines of the city. The city has its well-defined and well-understood limits or boundaries; and in this case they happen to have been fixed by statute: see 33 Vict. ch. 66 (O.); though that in itself does not seem to me to control, in any way, the question. It is not, of course, necessary that a municipality shall be all within a "ring fence" as it