

DIARY FOR APRIL.

1. Wed.....Prince Bismarck born, 1815.
5. Sun.....1st Sunday after Easter. Canada discovered, 1499.
6. Mon.....County Ct. Sittings for Motions. Supreme Ct. Sittings.
7. Tues.....County Ct. Non-Jury Sittings, except in York. Great fire in Toronto, 1847.
8. Wed.....Hudson Bay Co. founded, 1692.
12. Sun.....2nd Sunday after Easter.
13. Mon.....County Court Non-Jury Sittings in York.
14. Tues.....Princess Beatrice born, 1857.
15. Wed.....President Lincoln assassinated, 1865.
17. Fri.....Ben. Franklin died, 1790.
18. Sat.....First Newspaper in America, 1704.
19. Sun.....3rd Sunday after Easter.
20. Mon.....Last day for Call and Admission notices.
23. Thur.....St. George's Day.
24. Fri.....Earl Cathcart Governor-General, 1846.
25. Sun.....St. Mark.
26. Sun.....4th Sunday after Easter.
27. Mon.....Toronto captured (Battle of York), 1813.

Reports.

ONTARIO.

FIRST DIVISION COURT OF THE
COUNTY OF ONTARIO.

[Reported for THE CANADA LAW JOURNAL.]

LUKE v. KERR AND THE MUNICIPALITY OF
EAST WHITBY.

*R.S.O., chs. 157, 175, 176, 193, and 237—
Cemeteries and burial grounds—Assessment
therefor.*

The lands of a Cemetery Company, incorporated under the Joint Stock Companies' Letters Patent Act, R.S.O., c. 157, not actually laid out in plots or in use for burial purposes, but leased or used as farming lands, are not exempt from local taxation, either under the Cemeteries' Act (R.S.O., c. 175), or the Cemeteries' Letters Patent Act (R.S.O., c. 176), or under the Assessment Act (R.S.O., c. 193, ss. 3, s. 7).

Semble, that the words "burying ground" in the latter sections apply to a site for a burial ground acquired under R.S.O., c. 237, "respecting the property of religious institutions" and cognate Acts.

Held, also, that the Company in question, having elected to become incorporated as a trading or commercial company, is affected with all the incidents attached thereto, including taxation for local purposes.

Distinctions between "cemeteries" and "churchyard or burial ground" pointed out and discussed.

[Whitby, February 17. 1891.]

The plaintiff is the sexton and caretaker of the Ontario Union Cemetery Co., incorporated under the Joint Stock Companies' Letters Patent Act, (R.S.O., 157). The Letters Patent of incorporation are dated February 23rd, 1875.

The plaintiff's father was subsequently ap-

pointed the caretaker and sexton of the cemetery, and on his death his son succeeded in his position and duties. No written document or resolution appears to have existed, but the sexton's duties appear to have been confined to keeping the grounds and graves in decent order, dig graves, or attend funerals when required, and perform such other functions appertaining to his position as might be designated by the Managing Committee. He was paid no salary, but was entitled to receive for his own use the burial fees (other than the cost of the plot), and any other perquisites derived from the care of graves. He was also allowed the privilege of cutting the hay off the seventeen acres out of the twenty-five acres of which the cemetery consists, not laid out or used for burials, paying the company \$40 per year therefor.

Of late years the plaintiff broke up these seventeen acres and cropped them like any farm lands. The assessor of the corporation assessed the plaintiff in 1889 for the first time, and the taxes for that year were paid under protest by the Cemetery Company. He was again assessed for 1890, and, refusing to pay, the collector, the defendant Kerr, seized for the amount of the taxes and costs amounting to \$6.58. The plaintiff thereupon brought this action for illegal seizure. It was also admitted that he appealed to the Court of Revision, but, not appearing thereat, the appeal was dismissed.

The real plaintiffs, the Ontario Union Cemetery Company, claimed that under sec. 13 of R.S.O., c. 175, these lands assessed are exempt from taxation.

The defendants contended that they are not so exempt, on the ground that the company, by leasing or otherwise parting with the temporary use of the lands for burial purposes, at once became liable to assessment for, and payment of, taxes; and that, in any event, the matter was *res judicata* by the Court of Revision.

The reply to the first objection was that the use of the land at a reduced or nominal rent was really part of the plaintiff's remuneration; and to the second, that the lands being totally exempt from taxation under sec. 13 of R.S.O., 175, the Court of Revision had no jurisdiction; under the authority of *Rowse v. G.W. Ry. Co.*, 15 Q.B. 168., and *Nickle v. Douglas*, 37 Q.B. 67.

C. A. Jones, Oshawa, for the plaintiff.

J. E. Farewell, Q.C., Whitby, for the defendants.