

It is to be hoped that neither our Quebec legislature nor our Courts will accept Philippe le-Bel as an authority to decide what individual rights the people of this Province are to enjoy.

I shall now notice the modern French law, which also I hold does not justify expropriation for cemeteries with us; and for one grand reason, that cemeteries under the modern law of France are municipal (*communal*), are provided by and belong to the municipalities—are truly public, and are held and controlled by the public authorities for the general public of all creeds, without it being in the power of any religious body to claim the ownership or control of the cemetery, and exclude from burial therein. Is there no difference between expropriation for such cemeteries and expropriation for a cemetery with which neither municipality nor public authorities have anything to do after it is once acquired, but which remains in the exclusive control and ownership of a particular sect or denomination? Or is the difference fundamental, and constitutes all the difference between an object that possesses that truly public character which justifies expropriation and an object for which expropriation is not allowed, except on the principle that it is the right of the State to make bargains for private persons.

To shew the public character of cemeteries in France and their establishment and control by public authority, I refer to the decree of 23 prair. an XII which was national in its scope: Art. 2. says: “Il y aura, hors de chacune de ces villes et bourgs à la distance de 35 à quarante mètres au moins de leur enceinte, des terrains spécialement consacrés à l'inhumation des morts.”

Art. 3. “Les terrains les plus élevés et exposés au nord seront choisis de préférence; ils seront clos de murs de deux mètres au moins d'élévation. On y fera des plantations, en prenant les précautions convenables pour ne pas gêner la circulation de l'air.”

The whole decree is a provision for a great public object regarded purely as such.

Merlin, Rep. *Vo. Cim* p. 325, says: “Aujourd'hui, l'autorité Ecclésiastique n'intervient plus dans l'établissement des cimetières. *C'est un objet de pure administration municipale.*” It is for this reason and this alone that expropriation is allowed. The Municipality is one of those *fractions constitutive de la Société* or a constituent portion of the State spoken of by Debray, p. 6; but neither the Catholics by themselves nor the Protestants by themselves within any municipality constitute a *constituent*