

all times, protected by a sufficient fence—not beautified by sod, trees, flowers, or shrubs, but a burial ground all the same. It has not been used for commercial purposes, not let for pasture, not allowed to be used even temporarily for tents or buildings.

For the meaning of “burial ground” as used in a conveyance, see *May v. Belson*, 10 O.L.R. 686, and many cases there cited. These support my view.

It could not have been the intention of the legislature to remove from exemption a burial ground as soon as filled; even if all the space is not taken up by interments, it may well be that a new and more suitable burying ground would be secured. Burials may cease in a particular lot by reason of prohibition by the Board of Health, or for other reasons, but the old place would not, while continuing only as a burial place, be assessable: See *Dominion Coal Co. v. Sydney*, 37 N.S.R. 504.

In *Montreal v. Meldola*, 32 Q.S.C. 257, the word “parsonage” came up for consideration, and it was held that a parsonage to be exempt must be a house set apart by a church or congregation for the residence of its priest or minister, and accepted and occupied by him as such. By analogy this applies. The ground was set apart as a burying ground. The members of the church accepted it and used it as such. The remains of many persons were buried there and are there now. The land is occupied according to the intention at the time of its consecration.

I find as a fact that the land in question is “a burial ground,” that it has not been abandoned, but is still maintained as such, and so remains, and as such is not liable to assessment for municipal taxation.

I am of opinion that the plaintiffs are not entitled to recover the sum of \$439.22 paid for redemption, or any part of it. *Boulton v. York*, 25 U.C.R. 21 is an authority against the plaintiffs. Section 167 of the present Assessment Act is substantially the same as sec. 148 of the Act under which *Boulton v. York* was decided. The money when paid was for the purchaser. The plaintiffs were too late in taking action, and the amount of taxes for the years 1901, 1903 and 1908, realized by sale of the property, may be retained by the municipality.

There will be judgment for the plaintiffs for a declaration as asked that the land in the statement of claim mentioned was in 1900, and since, and is now, as a burying ground, exempt from municipal taxation.

The defendants must pay costs.