

BRITTON, J.:—What the defendants rely upon in answer to this action is fully set out in the statements of defence.

The facts, so far as they are material in the view I take, are as follows:—

The Humbervale Cemetery Company was on the 14th April, 1893, regularly incorporated under R.S.O. 1887 ch. 175, secs. 1 and 2.

The defendants Smith and others, shortly prior to the incorporation mentioned, acquired land, viz., 50 and $\frac{5}{10}$ acres, as set out in the statement of claim, for the purpose of a cemetery.

Having complied with the requirements of the Act last cited, the applicants for incorporation became “a body corporate under the name of the Humbervale Cemetery Company, with power to hold and convey the land, to be used exclusively for cemetery purposes.”

It was argued that the old company, under their corporate powers, and as trustees acting in good faith, could, if any part of the original parcel of land became unsuitable or not required for burial purposes, sell such portion, not in any way interfering with lots sold to or acquired by any persons for burial lots. There is much force in the argument—where land originally acquired is found much too large for use reasonably required for burial purposes—but, because of what has taken place, I express no opinion upon that point.

The company acquired 50 $\frac{5}{10}$ acres as described in the statement of claim. They subdivided a part into small burial lots 10 x 10—some lots were larger and not rectangular.

Later on, they desired to sell a portion of their land, not required, as the directors thought, for cemetery purposes. A price was fixed, and the defendant Winter was found as a person willing to buy at the price—but he questioned the right of the company to sell for purposes other than for cemetery purposes. The directors sought legal advice, and were told that the company might be reincorporated under the Joint Stock Companies Act. The old company then applied for reincorporation, under 2 Geo. V. ch. 31.

The Humbervale company was one of those companies within the Act, as it was “a corporation incorporated for purposes and objects within the scope of the Companies Act.” A cemetery company could be only Provincial—but it was brought directly under the Act by ch. 213, R.S.O. 1897, “An Act respecting Cemetery Companies.”