

were; it may be that two or more parts of it may be quite, in locality, separated and apart from one another; but that is quite a different thing; the cemetery is a thing of itself; it could not, for many years at all events, have been established within the city; and was, as the by-laws governing it plainly shew, intended by the municipality to be without its borders. The by-law of 1871 begins with these words: "Whereas it has become necessary to the health of the town of Chatham that a public cemetery should be established near to but without the limits thereof." Though again what the council of the municipality may have thought or desired does not govern; the sole question is, what is the effect of the legislation?

But all these things go to shew that the legislation in question was not deemed by any one directly concerned at the time of its enactment, or for many years after, to mean that which the applicants at this late day contend for. It is a thing of itself without the city walls, but, for its proper government by the municipality whose it is, it is made part of the city as if within its walls.

If it were ever intended to make the public roads, bordering on a city's cemetery, boundary-lines between city and county, the Legislature would hardly have made provisions so easily defeated as those under consideration would be, for instance, by choosing land upon roads which no stream crossed or by leaving a strip of land unacquired, except for the purposes of a way in and out, along the public road; and, in any case, why should the public ownership of a few acres of land in any other municipality create any greater obligation than private ownership of it should? And in this case could the proportion of cost of maintenance of bridge or road be anything but very small?

The application is made for the purpose of relieving the township from all obligation to erect and maintain bridges over streams crossing the path of the road in question, in placing that obligation upon the county and city: the application fails; its dismissal will leave the obligation on the township, which assumed and performed it many years ago and has performed it to the present time; no other order is necessary.

I make no order awarding costs; the question is an important one; and there is said to have been no consideration of it hitherto; the city and county will doubtless consider themselves well out of the difficulty at the expense of their own costs, which cannot be great upon a motion of this kind.

The application is dismissed without costs.