

and sell the surplus and divide the proceeds among the stockholders.

The charter of the company states explicitly that the land is "to be used exclusively for cemetery purposes." That portion which has been laid out in burial plots, as per plan, has not been assessed. I think that the defendants' contention, that the remaining eighteen acres, when cultivated as a farm and used directly or indirectly as such, and providing remuneration for their sexton or caretaker, is liable to assessment, is a reasonable one, and that it has ceased to be, or rather never became a burial ground, and is liable to municipal taxation. The plaintiff is a tenant, either at will or from year to year. A plot could not be sold or a grave opened in any part of the eighteen acres without his consent. In fact, the land (temporarily, it may be) is withdrawn from use as a burial ground. The managing director of the Company states that it would be willing to allow burial in any part of these eighteen acres, if asked for; but he can only speak for himself, and might be overruled by his co-directors or by a by-law or resolution of his Company.

I think it is a matter for comment, that if the Legislature thought the words of the Assessment Act were broad enough to cover the case of cemeteries, they would not have deemed it necessary to place on record the express exemption given by sec. 13 of R.S.O., c. 175. I give no weight to the objection that the cemetery is unnecessarily extensive. The whole land consists of twenty-five acres, and that is the minimum quantity permitted by R.S.O., c. 176, s. 3. I am of opinion that the eighteen acres was properly assessed, and to the plaintiff as the occupant of land not used for burial purposes, but the contrary; and if this be right, the dismissal of the appeal by the Court of Revision is an effectual bar.

In *Reg. v. St. Marys Abbots*, 12 A. & E., 824, it was held that a cemetery company were liable to be assessed for county rates, not only for the unused portion of their land but even for the burial plots sold, on the ground that they were still occupiers of the land used for burial, their conveyance being only grants of easements in perpetuity. This present Company does not pretend to convey the plots, but only to confer an easement, as appears by their certificates.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Exchequer Court.]

[Dec. 10.]

THE QUEEN v. MCGREEVY.

Claim for extra and additional work due under Intercolonial Railway contract—31 Vict., c. 13, ss. 16, 17, 18; and 37 Vict., c. 15—Change of chief engineer before final certificate given—Reference of suppliant's claim to said engineer—Report or certificate by chief engineer recommending payment of a certain sum—Effect of—Approval by commissioners or minister necessary.

Upon a claim made by the respondent for the sum of \$120,371 as being due to him for extra work, etc., beyond what was included in his contract for building a section of the Intercolonial Railway, and which sum he alleged had been certified to by F.S., as the chief engineer of the Intercolonial Railway, in his final and closing certificate given in accordance with clause 2 of the respondent's contract, a statement of admission was agreed upon by both parties, and the following question was submitted to the Exchequer Court: "Is the suppliant entitled to recover on the report or certificate of F.S.?" The report was never approved of by the Intercolonial Railway Commissioners, or by the Minister of Railways and Canals, and 31 Vict., c. 13, s. 18, enacts: "No money shall be paid to any contractor until the chief engineer shall have certified that the work for, or on account of which, the same shall be claimed has been duly executed, not until such certificate has been approved of by the commissioners."

Held, 1st, per RITCHIE, C.J., and GWYNNE, J., reversing the judgment of the Exchequer Court, that the report of F.S., assuming him to have been the chief engineer to give the final certificate under the contract, cannot be construed to be a certificate of the chief engineer which does or can entitle the contractor to recover any sum as remaining due and payable to him under the terms of his contract, nor can any legal claim whatever against the Government be founded thereon.