

CHESTER TIMES – November 18, 1902

CAN COLORED DEAD BE BURIED THERE – Eden Cemetery Case is Before the County Court

A final hearing upon the bill and answer in the case of the borough of Collingdale against the Eden Cemetery Company took place before Judge Johnson yesterday. The readers of the Times will recall that the council of the Borough of Collingdale passed an ordinance prohibiting the interment of bodies within the borough limits or within such partial limits as they may from time to time prescribe, and to regulate the depth of graves. This was at the time the Eden Cemetery people sought to bury their dead within the borough limits. Judge Johnson some time ago dismissed the injunction against the interment of the dead, and the hearing yesterday was for the purpose of determining whether or not, the ordinance is valid.

The cemetery people, who are colored claim that the ordinance discriminates against them, or in other words is class legislation, and is not in line with public policy, inasmuch as a majority of the people of the borough want the cemetery located in the borough by reason of the fact of the revenue it will bring into the borough treasury.

Counsel for the cemetery company sought to show this fact in court yesterday, but Judge Johnson would not permit it to be done, taking the position that they must stand or fall on the ordinance, as the action of Council is final providing their actions were legal.

J. Claude Bedford and Morton Z. Paul, Esqs. represented the cemetery company and Henry Schalscher, C.B. Galloway and W. Roger Fronefield, Esq., represented the borough.

The case on the part of the borough was tested after the clerk had been called and testified to the final passage of the ordinance at a special meeting held on July 23.

Counsel for the cemetery company then proceeded to show that the ordinance on first reading was passed illegally. The clerk of council read the minutes at both meetings at which the ordinance was passed. At the first meeting on July 21, the call simply stated that it was a special meeting for the purpose of awarding contracts for macadamizing certain highways of the borough, but in addition to this the ordinance in question was introduced and read for the first time, being passed at the special meeting on July 27, on second and final passage. The latter meeting was called for general business. Counsel for the cemetery company claim that it was illegal for the counsel to pass the ordinance at the first meeting because it was not mentioned in the call.

The borough answers this by saying that all members were present and had the right to transact any business they see fit, notwithstanding the call.

The Court would not permit counsel for the cemetery company to show that the location of the cemetery at the point in question would not be detrimental to the public health.

THE SECTION IN QUESTION – Counsel for the cemetery company depend largely on the facts contained in the last paragraph of their bill to secure a decision from the Court in their favor. This paragraph reads as follows:

The ground purchased for the cemetery company on July 9, 1902, is located on the outskirts of the borough, bounded by open fields and another cemetery lying between it and the buildup portions of the borough, and is not injurious to public health, and there is no reason why the police power of the borough should be exercised to deprive the cemetery company of its right to use its own land for a lawful purpose. Here are one

hundred acres in the borough of Collingdale, and only one hundred and twenty houses therein, and but two houses near the portion of the ground to be laid out as a cemetery. The cemetery grounds drains away from the borough of Collingdale and through the Mt. Zion Cemetery to Darby Creek.

A FURTHER CLAIM – Council for the cemetery company claims further that “the application for the charter of the Eden Cemetery Company was properly filed in the office of the Prothonotary of this court, and duly advertised that the application would be presented to the Court on July 21, 1902. That on July 21, 1902, the defendant was ready to present its application but the Court was absent. That the defendant through inability to find the Court, though many and repeated attempts were made, could not get the decree signed before August 6, 1902, when the Court signed it as of August 4, and it was immediately recorded.

“Also that the plaintiff’s ordinance in question was not fully advertised, and did not go into operation until August 5, 1902.”

Judge Johnson reserved his decision.

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