

CHESTER TIMES – December 13, 1902

EDEN CEMETERY GETS A COURT DECISION – Judge Johnson Dismisses the Bill in Egnity – Borough Pays the Cost

The officials of the borough of Collingdale have received another setback in their effort to prevent the establishment of another burial ground within the borough limits by the Eden Cemetery Company, who desire to inter the bodies of colored people. Judge Johnson handed down an opinion this morning dismissing the bill in equity through which the borough sought to have the cemetery people permanently restrained from interring colored dead in the borough. The Court directs that the costs of such proceeding shall be paid by the borough. The opinion in full follows:

On July 24, 1902, the borough of Collingdale passed an ordinance of which the following is a copy:

Borough of Collingdale, Ordinance No. 58:

“An ordinance prohibiting the establishment of cemeteries in the borough of Collingdale and prohibiting interments within the limits of said borough other than in existing cemetery.

“Be it enacted and ordained by the chief burgess and council of the borough of Collingdale.

“Section 1. It shall be unlawful for any person or persons, association or corporation to establish any cemetery or burying ground or to use for the purpose of interment of human bodies any ground within the limits of the said borough.

“Section 2. The interment for burial of any human body in any place within the said borough, excepting in the existing cemetery, a declared to be a nuisance and is hereby prohibited.

“Section 3. All ordinances or parts of ordinances conflicting herewith are hereby repealed.

“Passed July 23, 1902.

“Benjamin B. Glover, Jr., secretary.

“Approved July 24, 1902.

“L.B. Buck, Chief Burgess.”

FILED THE BILL – On September 26, 1902, the plaintiff filed this bill setting forth that the plaintiff was a municipal corporation incorporated under the provisions of the Act of Assembly of April 3, 1851, and its supplements, the names of the corporate officers of the borough, the passage of the ordinance above referred to, the provisions of the Act of April 3, 1851, under and by authority of which it claimed authority to pass the ordinance.

It further sets forth that the defendant is a cemetery company corporation of the Commonwealth of Pennsylvania, was incorporated on August 4, 1902. It further sets forth that the defendant is about to disregard the ordinance and inter-human bodies within the limits of the borough in violation of the provision of the same, and praying the Court to enjoin the defendant from making interments within the limits of the borough.

A preliminary injunction was granted which was on October 11, 1902, dissolved.

THE DEFENSE – To this bill the defendants filed an answer, also a demurrer, various defenses were set up in the answer.

The demurrer set up:

1. That upon the face of said bill the plaintiff is not entitled to the relief claimed.

2. That the plaintiff has not in or by its said bill shown any case entitling it to the relief prayed.

3. That the ordinance set forth in the plaintiff's bill is void ab initio, and the injunction should therefore be dissolved.

The case was heard on bill, answer, proofs and demurrer.

Both sides pray for the findings of certain facts and conclusions of law.

The demurrer if sustained renders it unnecessary to consider the other questions raised.

This is a bill in equity to enforce an ordinance of a municipal corporation by injunction.

The bill does not declare (except what is set forth in the ordinance) that the cemetery is a municipal perse, and there is no evidence that it is.

In such a case equity will not lend its aid to enforce the ordinance of a municipal corporation, *City vs. Lester*, 3 Sup. Rep 475; *Williamsport vs. McFadden* 15 W.N.C. 269; *Owensdale vs. Weaver* 2 D.R. 344; *Borough of Cambridge Springs vs. Moses* 22 C.C. Rep 637.

In the judgment of the Court this bill cannot be sustained.

It is not necessary to consider the other questions raised.

The plaintiff has mistaken its remedy.

Bill dismissed. Costs to be paid by plaintiff.

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