

NEW ZEALAND.



QUADRAGESIMO PRIMO

VICTORIÆ REGINÆ.

No. 46.

ANALYSIS.

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AN ACT relating to Cemeteries.

Title.

[8th December, 1877.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Supplement to the New Zealand Gazette No. 99, of the 13th December, 1877.

Cemeteries Management.

Short Title.

1. The Short Title of this Act shall be "The Cemeteries Management Act, 1877," and it shall come into operation on the first day of January next after the passing hereof.

PUBLIC CEMETERIES.

Governor may appoint Trustees of cemeteries.

2. The Governor may from time to time appoint so many Trustees, not fewer than three in number, as he may think fit, to provide for the maintenance and care of any public cemetery, and every such appointment shall be published in the *New Zealand Gazette*. The Trustees so appointed may exercise all the powers granted to them under this Act, notwithstanding that the legal estate in any public cemetery may not be vested in them.

Power of Trustees to hold lands.

3. The Trustees so appointed, and their successors to be appointed as hereinafter mentioned, shall have power to hold any lands or hereditaments that may be conveyed to them by deed of grant from the Crown, or by any other sufficient deed of conveyance, or that may be vested in them in trust for the establishment or purpose of a public cemetery.

Power of Governor to remove Trustees and appoint new Trustees.

4. The Governor may from time to time, as and when he shall think proper, remove from the said trusts any Trustee of any such cemetery, and also upon the death, resignation, or removal of any Trustee appointed under this Act may appoint another in his stead.

Removal and appointment to be published in *Gazette*.

5. Every such removal and appointment shall be published in the *New Zealand Gazette*, and upon the publication thereof, without any further conveyance, the legal estate in all lands and hereditaments respectively held by any such Trustee in trust for the purposes aforesaid shall vest in such new Trustee or Trustees solely or conjointly with the continuing Trustee or Trustees, as the case may require.

Quorum of Trustees.

6. The Trustees of any such cemetery shall not be competent to proceed to business at any meeting unless there be at least three of them present.

Questions to be decided by majority.

7. The majority in number present at any meeting of the said Trustees shall decide and determine all questions, matters, and things which may be discussed or considered at such meeting.

Trustees to adopt by-laws.

8. The Trustees of any such cemetery may adopt by-laws for convening meetings, and such other rules and regulations as may be necessary for their own guidance and management.

Rules and regulations.

9. The Trustees of any public cemetery shall have power and authority to make such rules and regulations, and to do and perform and cause to be done and performed all such acts, matters, and things, as may be necessary and proper for any of the purposes mentioned in section twenty-three, and for directing the positions of all graves and vaults to be made in the said cemetery, the depths of the graves, and construction of coffins to be admitted into vaults, and the covering of vaults so as to prevent the escape of any noxious exhalation or evaporation in the said cemetery, and for protecting the buildings, monuments, shrubberies, plantations, and enclosures therein and thereof from destruction or damage.

To be published in *Gazette*.

10. No rule or regulation shall be in force until the same has been submitted to the Governor in Council, and published in the *New Zealand Gazette*.

Trustees to make and publish scale of fees.

11. The Trustees of any public cemetery may from time to time, with the consent of the Governor in Council, make and publish in the *New Zealand Gazette* a scale of fees payable on any vault or grave being dug and made and any monument or tombstone being erected or placed in any part of such cemetery, and may from time to time, subject as aforesaid, revise and alter such scale of fees.

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A copy of every such scale of fees, and of any revision thereof, shall be affixed or posted in some conspicuous part of every such cemetery, and shall be at all times continued there, and preserved in a distinctly legible condition.

12. The Trustees of any public cemetery under any such rules and regulations as aforesaid may sell the exclusive right of burial either in perpetuity or for a limited period in any part of the said cemetery, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period.

Trustees may sell exclusive right of burial, &c.

13. The relations or friends of persons already interred in any public cemetery administered under this Act may at any time within one year from the passing thereof, and the relations or friends of persons hereafter interred in any such cemetery may at any time within one year from the date of such interment, purchase the exclusive right of burial in perpetuity or for a limited period in the pieces of land in which such interments have taken place, subject to the general regulations as to price and otherwise.

After burial, places of interment may be purchased.

14. If such scale of fees have been made and published as aforesaid, the Trustees of any such cemetery may permit any vault or grave to be dug or made in such cemetery, and any monument or tombstone to be erected or placed in any part of any such cemetery as they may think proper, upon payment to them by the person desiring to dig and make such vault or grave, and to erect and place such monument or tombstone, of the fees named in the scale aforesaid.

Vaults and monuments.

15. When any person desires to erect and place any monument or tombstone in any part of any such cemetery, he shall, before such permission as aforesaid is given, submit a plan of the monument or tombstone proposed to be erected and placed to the Trustees of such cemetery, who shall be at liberty to withhold their permission, and prevent the erection of any monument which shall appear to them inappropriate or unbecoming.

Plan of vault, &c., to be submitted to Trustees.

16. The Trustees of any such cemetery shall determine and fix the position of any monument which may be proposed to be erected according to the description, size, and character thereof, having reference to the general plan for ornamenting the said cemetery in an appropriate manner.

Trustees to fix position of vault, &c.

17. Any person so digging and making such vault, grave, or tombstone, or erecting and placing such monument in such cemetery by and with such permission as aforesaid, and upon payment of the fees aforesaid, shall be entitled to have maintained and kept up such vault, grave, monument, or tombstone, according to the terms of such permission to and for the sole and separate use of such person and his representatives in perpetuity, or for the time limited in the aforesaid permission.

Monuments, &c., to be kept up.

18. The Trustees of any such cemetery, notwithstanding anything herein contained, may permit any poor person to be buried in such cemetery free of any charge whatsoever.

Burial of poor persons.

19. Before any corpse shall be permitted to be interred in any vault, brick grave, or in any place of burial, the exclusive right of burial or interment wherein shall have been sold or granted by the said Trustees as a family or private burial-place, the said Trustees or any officer employed by them may inquire, and they or he shall be entitled to have produced to them or him satisfactory evidence that the person for the time entitled as owner to the exclusive right of burial or interment in such vault, brick grave, or other burial-place, has consented or would not object to such interment taking place therein.

Private vaults protected.

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Monuments, &c.,
removed.

20. When any monument, tablet, or other erection has been erected or built contrary to the terms and conditions upon which permission to erect or construct the same was granted, or in case such terms and conditions as well as the regulations of the said cemetery have not been complied with, the Trustees may take down and remove such monument, tablet, or other erection.

Application of
moneys received.

21. All sums received for the purchase of sites of graves in the portions of any public cemetery appropriated to any denominations or sects as hereinafter provided, and in any portions of any public cemetery not appropriated exclusively to any denomination or sect, and all fees or sums to be paid upon interments in any such portions of public cemeteries as aforesaid, shall be received by the respective Trustees or guardians of such cemetery or portions thereof, and be by them applied to the erection and maintenance of the necessary buildings and fences, and to all matters connected with the permanent improvement and good order of such cemeteries or portions thereof, and the interment of poor persons.

Trustees to keep
account and abstract.

22. The Trustees of every cemetery shall keep a full and particular account of all sums of money received and expended by them, and an abstract of such account made up from the day of their first appointment to the thirty-first day of December in the first year, and from the first day of January to the thirty-first day of December, both inclusive, in each subsequent year; and such accounts and abstracts shall be at all reasonable times open to the inspection of any person appointed by the Governor in that behalf.

Trustees' power.

23. The Trustees of any public cemetery shall have power to enclose the land comprised in such cemetery with proper and sufficient walls, rails, fences, or palisades, and to erect suitable gates and entrances, and to lay out and ornament such cemetery in such manner as may be most convenient and suitable for the burial of the dead, and to embellish the same with such walks, avenues, roads, and shrubs as may to them seem fitting and proper; and to preserve, maintain, and keep in a cleanly and orderly state and condition, and cause to be so maintained and kept, the whole of any such cemetery and its walls and fences, and all monuments, tombstones, enclosures, buildings, erections, walks, and shrubberies therein and belonging thereto; and the Trustees shall expend the moneys in their hands from time to time to be received by them under this Act in and about the matters aforesaid, and in the burial of poor persons.

Trustees to prosecute
for damage.

24. The Trustees of any cemetery shall have power to prosecute all persons who may at any time do, or cause to be done, any damage to any building, monument, tombstone, shrubbery, plantation, or enclosures of the said cemetery.

Malicious injury.

25. If any person shall wantonly or wilfully destroy, or do or cause to be done any damage to, any monument vault, tombstone, building, erection, railing, fence, shrubbery, tree, or plant in any cemetery, or to any wall or fence thereof, or shall wilfully and unlawfully disturb any persons assembled in any cemetery for the purpose of burying any body therein, he shall be guilty of a misdemeanour, and being convicted thereof before any two or more Justices, who are hereby authorized to hear and determine in a summary way any complaint thereof made by the said Trustees, or by any officer or servant employed by them in the said cemetery, or by any person to whom the burial-place may belong, he shall be liable for every such offence to a penalty not exceeding twenty pounds, or at the discretion of such Justices to imprisonment for any period not exceeding three months.

Penalty.

Injuries to monu-
ments, &c.

26. If any person do, or cause to be done, any injury to any such monument, vault, tombstone, building, erection, railing, shrub-

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bery, tree, or plant, or wall, or fence, whether the same be done wilfully or wantonly or otherwise howsoever, he shall be liable to pay a reasonable sum of money by way of damages and compensation therefor, which said sum of money shall be recoverable in any Court of competent jurisdiction by the Trustees of the cemetery, or any person injured by such damage.

27. If any person shall be guilty of any indecent conduct or language within any cemetery, or shall commit any nuisance therein, or shall play at any game or sport, or discharge firearms save at a military funeral in any cemetery, or shall daub or disfigure any wall or fence in or around any cemetery, or put up any bill on any such wall or fence, he shall be liable to a penalty for every such offence not exceeding ten pounds.

Indecency or misbehaviour.

28. It shall be lawful for any Trustee, or for any officer or servant of the Trustees, and for all such persons as he shall call to his assistance, to seize and detain any person who shall commit or be in the act of committing an offence against this Act, and whose name and place of abode shall be unknown to such Trustee, officer, or servant, and to convey such person before some Justice without other warrant or authority than this Act; and, in case such person refuse to satisfy the Justice as to his name and place of abode, such Justice is hereby empowered and required either to proceed immediately to the hearing and determining the complaint in the same manner as if heard by summons before two or more Justices, or to order such person to be detained in custody until he shall be brought before two or more Justices to be dealt with in the ordinary course.

Trustee may seize and detain any person committing offence against this Act.

29. One moiety of the money arising from any penalty or forfeiture imposed by this Act, when recovered, shall be paid to the Trustees of the cemetery in respect whereof such penalty or forfeiture may have been imposed, for the uses of such cemetery, and the other moiety to the use of the informer or person prosecuting, who shall be deemed in all cases a competent witness.

Appropriation of Penalties.

30. All moneys, fees, and penalties recoverable under this Act, or any rule or regulation made in pursuance thereof, may be recovered in a summary manner as provided by "The Justices of the Peace Act, 1866," and any Act amending the same or passed in substitution thereof; and any proceeding which shall be had and taken in a summary way in pursuance of this Act shall not be quashed for want of form, nor be removed by *certiorari* or other process into the Supreme Court, or other Court.

Want of form, and no *certiorari*.

31. All powers of the Trustees in respect of the control and management of any public cemetery shall cease and determine in respect of the portion of any public cemetery appropriated to the exclusive use of any particular denomination or sect, whenever guardians of such portion shall be appointed as hereinafter mentioned: Provided that all rules and regulations made by any such Trustees shall continue in force within any portion of such cemetery as aforesaid until the same shall be altered and revoked by the guardians of such portion.

Authority of Trustees transferred in certain cases.

PORTIONS SET APART FOR PARTICULAR DENOMINATIONS, ETC.

32. Upon the request of the governing body of any separate religious denomination or sect, the Governor shall, upon such terms and conditions as shall not be inconsistent with the known tenets or usages of such religious denomination or sect, permanently appropriate and set apart a portion of any public cemetery to be used for the exclusive interment of the bodies of members of such denomination or sect.

Governor may set apart portions of cemeteries for different religious bodies.

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And the Trustees shall permit such portion so set aside to be consecrated according to the rites of the particular denomination, and the part which is so consecrated shall be used only for burials according to the rites of the particular denomination. And the Trustees shall define by suitable marks, not being a dividing fence, the portions so set aside.

Any portion of a public cemetery so set apart as aforesaid may be enclosed, at the expense of the denomination or sect for whom the same is appropriated, with any suitable open fence of a character that will not destroy the general appearance of the whole cemetery.

Mortuary church.

33. Where the members of any religious denomination desire, at their own expense, to erect and build in any such cemetery a suitable mortuary church or chapel for the performance of the rites and ceremonies in the burial of the dead according to the usages of such denomination, the Trustees of the said cemetery shall permit the same to be erected and built within such part of the said cemetery as shall be specially set apart for that denomination.

Trustees not to interfere with religious ceremonies.

34. The Trustees of any public cemetery shall not, by any rule or regulation, or any act, matter, or thing, at any time interfere directly or indirectly with the performance of any religious ceremony in the burial of the dead according to the usage of the communion to which the deceased may have belonged, or with the distribution of the lands or hereditaments comprised in any such cemetery at any time made or intended to be made by the deed of grant or other conveyance, or by the Governor, to and amongst separate and distinct religious denominations and communions.

Ministers of religion to have free access.

35. The minister of any denomination, for which any portion of any such cemetery shall be specially set apart, may have free access and admission to such portion of the said cemetery at all times as he shall think fit, and may freely exercise his spiritual functions therein without any hindrance or disturbance of the Trustees of the said cemetery or any person whatsoever.

Denominations to have control of their own portions of cemetery.

36. Every denomination or sect shall provide for the maintenance and care of any part of a public cemetery appropriated to its exclusive use, and shall have the direction of the order and course in which such ground shall be opened and used for the purpose of interment, and the times at which interments therein may take place, and as to the setting up of headstones and monuments, with the inscriptions thereon, and the removal of such headstones or monuments.

Denominations may appoint guardians of their own portions.

37. Every denomination or sect may appoint and remove, from time to time, fit and proper persons, not being fewer in number than three, to be guardians of the portion of any public cemetery appropriated to the exclusive use of such denomination or sect; and the names of such guardians shall be submitted to the Governor, and, if approved by him, shall be published in the *New Zealand Gazette*, and thereupon the said guardians shall, in respect of the portion of the public cemetery appropriated to the particular denomination or sect, have all the powers of control and management granted by this Act to the Trustees of any public cemetery.

MISCELLANEOUS.

Inspection of cemeteries, &c.

38. The Governor may, from time to time, appoint and authorize any person to inspect any public cemetery or any portion thereof exclusively appropriated to any denomination or sect, or any other cemetery, burial-ground, or place of burial, and ascertain the state and condition thereof, and examine the accounts of receipts and expenditure in relation thereto, and, where regulations have been made respecting the same, to ascertain whether such regulations have been observed

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and complied with; and if any Trustee, guardian, manager, or other person having the care of any such cemetery or burial-ground or place of burial subject to such regulations as aforesaid, shall violate, or neglect or fail to conform to or obey or to enforce any such regulations, he shall, on conviction before any two Justices, forfeit and pay a sum not exceeding ten pounds.

If any person appointed as aforesaid shall find any cemetery or burial-ground or place of burial, or any part thereof, or the fences thereof, in a state of neglect or want of repair, he may cause all necessary repairs to be forthwith done, and the cost and expenses thereof may be recovered in a summary way as a debt from the Trustees, guardians, or persons having the control of such cemetery, burial-ground, or place of burial; or else he may report the case to the Governor, who thereupon may order any such cemetery or burial-ground or place of burial to be closed, or take such steps upon any such report as he may think necessary in order to prevent desecration.

39. This Act shall apply to all public cemeteries in respect of which no Trustees have been heretofore appointed, or which have not been vested in any public body in trust; and where the Trustees of any public cemetery, or the Trustees, managers, or other persons having the care and control of any other cemetery, burial-ground, or place of burial heretofore established, shall be desirous of adopting the provisions of this Act or any of them in the place of any Act or Ordinance, or any provisions of such Act or Ordinance, heretofore regulating the management of any such last-mentioned cemetery, burial-ground, or place of burial, the said Trustees, managers, or other persons may apply to the Governor in Council in that behalf, who may thereupon cause inquiry to be made in such manner as he shall think fit as to the desirability of granting such petition; and the Governor may, by Order in Council, direct that the provisions of this Act or any of them shall come into force in respect of any such cemetery, burial-ground, or place of burial, or he may reject any such application.

Act may be applied to cemeteries already established.

40. Every such Order in Council as aforesaid shall appoint a day whereon the provisions of this Act or any of them shall come into force in every case, and from and after the day so appointed the same shall be in force accordingly, and all the provisions of any Act or of any Ordinance of any Provincial Legislature, under the provisions whereof any public or other cemetery, burial-ground, or place of burial has theretofore been managed, shall, to the extent to which the same shall be contradictory of or repugnant to the provisions of this Act adopted by such Order in Council, be repealed in respect of such last-mentioned cemetery, burial-ground, or place of burial.

Order in Council to repeal previous Acts.

41. All appointments, regulations, and fees made under such Act or Ordinance as aforesaid shall continue in force until the same shall be altered under the provisions of this Act; and all fees and sums of money due and penalties incurred, and all matters or things commenced or in progress under such Act or Ordinance, may respectively be prosecuted and recovered or completed and perfected thereunder, notwithstanding the repeal thereof; and such repeal shall not affect anything lawfully done or suffered.

Saving past transactions.

42. Upon the request of the governing body of any separate religious denomination or sect, the Governor may, by Order in Council, direct that, from and after a date to be named in such Order, the provisions of this Act shall take effect in respect of any cemetery, burial-ground, or place of burial heretofore set apart for the exclusive use of any such denomination or sect, and in respect of the management whereof there has not heretofore existed any Act or Ordinance; and

Act may be applied to any denominational burial-grounds.

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from and after the day so appointed this Act shall apply to such cemetery, burial-ground, or place of burial, in the manner herein provided, with respect to the portion of any public cemetery that has been appropriated to the exclusive use of any denomination or sect.

Private lands may be dedicated as public cemeteries.

43. Where the members, or any section not less than twenty-five in number of the adult members, of any separate religious denomination or sect shall desire that any private lands which they may have respectively acquired by purchase or otherwise should be set apart as a cemetery, to be used for the exclusive interment of those members of such denomination or sect for or by whom such land was acquired as aforesaid, they shall, by deed of conveyance or transfer, surrender the said land to Her Majesty; and thereupon the Governor shall by Order in Council set apart and reserve the land so surrendered as a public cemetery, to be used exclusively for interments of members of the denomination or sect by whom such land was surrendered to Her Majesty; and in the same Order in Council the Governor shall, in manner provided by the last foregoing section, bring the provisions of this Act into force in respect of such cemetery, as if he had been requested to do so by the governing body of such denomination or sect:

Proviso.

Provided always that the Governor may refuse to accept the surrender of any such private lands if he shall think the same not fitted for a public cemetery by reason of locality or other sufficient cause.

Interpretation of "governing body."

44. The term "governing body" in this Act shall include the Roman Catholic Bishop of any diocese in New Zealand, the Superintendent of any district in New Zealand of the Wesleyan Methodist Society, the senior office-bearer of any other separate denomination or sect in any district, or, in the absence of any of the aforesaid persons, shall mean any ten adult members of any separate denomination or sect.

Burial-Ground Closing Act not affected hereby.

45. Nothing in this Act contained shall be deemed to repeal or in any way to affect any of the provisions of "The Burial-Ground Closing Act, 1874."

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