

*Laws of Her Majesty's Province of Upper Canada*, passed in the year 1849. Montreal: Stewart Derbishire & George Desbarats, 1849.

12 Victoria – Chapter 191

**An Act to incorporate The Mount Herman Cemetery. 30th May, 1849.**

Whereas the practice of burying in populous Cities is objectionable, and other provision for the interment of the dead is desirable; And whereas the persons hereinafter named, and others have joined an Association called the Quebec Protestant Cemetery Association, for the purpose of establishing a rural Cemetery near the City of Quebec, and have prayed that they and their successors be incorporated under the name of The Mount Herman Cemetery, for the purpose aforesaid; And whereas it is proper to provide for the permanence of the establishment, the decent preservation of the ground and continued protection to the remains there committed to the earth: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That George O'Kill Stuart, Esquire, Mayor of Quebec, and James Douglas, Jeffery Hale, John Musson, John Gilmour, Henry S. Scott, James Gibb, Christian Wurtele, and Robert Cassells, Esquires, Directors of the said Association, and such others as now are or may hereafter become shareholders in the undertaking aforesaid, and their successors for ever, shall be, and they are hereby constituted a body politic and corporate, in fact and in name by the name of The Mount Herman Cemetery, and by that name they and their successors shall have perpetual succession and a Common Seal, with power to alter and make new the same at pleasure, and may, by that name, contract and be contracted with, sue and be sued, plead and be impleaded in all courts and places whatsoever, and shall have full power and authority to take, have, hold and retain as proprietors, with power to add to the same to an extent not exceeding two hundred acres, all that tract of land in the Fief and Seignior of St. Michel, in the banlieue of the City of Quebec of about thirty-two arpents in superficies, bounded in front by the Cap Rouge Road, in the rear partly by the Cime du Cap, and partly by the north-west boundary of lot number twenty-two and the extension thereof towards the north-east, to a point at or near the Cime du Cap, near to which there is a spring; on the north-east by land formerly in the possession of Messrs. Wood and Gray, and on the south-west by Sillery Road; and also all that other tract of land lying on the south-east of the lot above described, bounded on the north-west by the lot aforesaid and adjoining thereto, towards the north-east and south-east by the Cime du Cap, and on the southwest by the north-east side of Earl Street, saving always the right of indemnity of the Seignior, and may also hold and take moveable property for the purpose hereinafter mentioned: Provided always, that the said immoveable property shall be held and used as a Protestant Cemetery, and for no other purpose, for ever.

II. And be it enacted, That the Capital Stock of the said Association shall be five thousand pounds, divided into one thousand shares of five pounds each, to be held by Protestants only, and

that each proprietor shall be entitled, at all meetings of the members of the said Association, to one vote for each share he may hold up to ten, but no member shall have more than ten votes, and at all meetings of the proprietors, all questions shall be decided by the majority of votes then present: And no person shall be allowed to vote by proxy, unless in cases of absence from the City and Parish of Quebec, and unless such proxy be a proprietor or Shareholder in the said Corporation, and produce written authority; Provided always, that any female may vote by proxy, such proxy being likewise a Stockholder.

III. And be it enacted, That the persons above named, and their successors elected according to the Articles of the said Association, shall be Directors of the said Association, three of whom shall retire annually, those retiring first in succession who have the least number of votes, after which the three Directors shall retire annually who have been elected longest without re-election, and the said Directors shall be nine in number, each being a Proprietor of at least five shares, and when any vacancy in the office of Director occurs by death, resignation, removal from Lower Canada, or otherwise, it shall be the duty of the Directors in office to call a meeting for the purpose of supplying such vacancy.

IV. And be it enacted, That there shall be a General Meeting of the Association, and an election of Directors on some day in each year, in the month of March, to be fixed by the Directors for the time being, for the appointment of three Directors, after ten days' notice of such meeting by public advertisement: and the Directors shall also summon a Special General Meeting of the Shareholders, on a requisition made to them for that purpose, signed by at least ten Shareholders, representing amongst them not less than one hundred shares of the Capital Stock, and all notices of Special General Meetings shall specify the object for which they are called.

V. And be it enacted, That the management of the affairs and property of the said Corporation shall be vested in the said Directors, and any three Directors shall form a quorum of the Board, and any majority of such quorum, at meetings duly convened by a notice to all the Directors, may exercise all the powers of the Directors; Provided that no Director shall have more than one vote, at any meeting of Directors, and the President or Chairman shall be chosen by the Directors, and in case of an equal division of votes, the question proposed shall be held to be negatived.

VI. And be it enacted, That the Directors shall cause books to be kept, in which minutes of all their proceedings shall be recorded, as also monetary statements of the affairs of the Association, and they shall prepare, ten days before the Annual Meeting of the Shareholders, an Annual Report and detail of their proceedings, and of their receipts and expenditure, which report shall remain on the file with the Secretary or Clerk or other Officer, and shall be open to the inspection of any Shareholder; and the account and statements to be made by the Directors shall be so made up to the thirty-first of December of each year, to be laid, as soon as possible, before a Committee of Audit to be composed of three Shareholders, who shall examine the accounts and report at the first annual meeting, and the said Auditors shall be three Shareholders, to be appointed at every annual General Meeting on motion, to act for the ensuing year.

VII. And be it enacted, That the Directors may call in such portion of the stock subscribed before or after the passing of this Act as they may see fit, by calls not exceeding one pound for each share, payable when and where they may direct, provided that fifteen days' notice thereof be given in two newspapers, published in the said City, but nothing herein contained shall exonerate any existing liability to the said Association, but on the contrary such liability shall be enforced in the same way, and the said Corporation may enforce the payment of calls, and sums now due and called for, as is hereinafter prescribed, with respect to future calls and liabilities, but no proprietor in the said Corporation shall be in any manner whatsoever, liable for, or charged with the payment of any debt or demand due by the Corporation beyond the amount of his, her, or their subscribed share or shares in the Capital Stock of the said Corporation.

VIII. And be it enacted, That any Shareholder refusing or neglecting, or who shall have refused or neglected to pay any or either of the instalments on his shares, at the time or times required by the notice of the Directors, shall incur a forfeiture of his stock, at the discretion of the Directors, after thirty days' notice of their intention to declare such forfeiture, and they may proceed to the sale thereof if the arrears are not paid up before the sale thereof.

IX. And be it enacted, That the said Association may receive donations, devises, legacies and bequests for the purposes of the said Association, and for making, maintaining, and keeping in good order the lots and burial places in which the exclusive right of burial or of placing any monument or tablet may have been granted.

X. And be it enacted, That the said Corporation may, if they have any surplus funds after making the outlay and expenditure authorized by this Act, and paying dividends as hereinafter mentioned, invest the same in public securities, or appropriate the same to such public use, purpose or benefit, as they may think proper; such purpose to be approved of at a Special General Meeting.

XI. And be it enacted, That the shares in the stock of the said Corporation shall be assignable, but only with the consent and approval of the said Directors, by delivery of the certificates to be issued to the holders of such shares, respectively and by assignment in the form following:

"I, A. B. in consideration of the sum of \_\_\_\_\_ paid me by C. D. do hereby sell and transfer to the said C. D. \_\_\_\_\_ share in "The Mount Herman Cemetery," to hold to him the said C. D. subject to the same rules, regulations and conditions as the same are now held by me. Which assignment I do hereby accept.

"Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year;"

Or in any other convenient form to be prescribed by any By-law of the said Corporation; and that by such assignment, the party accepting such transfer shall thenceforth become, in all respects, a member of the said Corporation in respect of such share or shares in the place of the party so transferring the same; but no such transfer shall be valid or effectual until all calls or instalments due on the shares purporting to be transferred and all debts or moneys due to the said Corporation thereon shall have been fully paid up and discharged; and a copy of such transfer extracted from

the proper book of entry, and purporting to be signed by the Secretary, clerk or other officer of the said Corporation, duly authorized thereto, shall be sufficient *primâ facie* evidence of every such transfer in all Courts in this Province.

XII. And be it enacted, That the Directors shall have full power to dispose of such part of the stock of the said Corporation as may remain to be disposed of, or as may from time to time be added to or fall into the general mass, either by forfeiture or otherwise, on such terms and conditions and to such parties, being Protestants, as they may think most likely to promote the interests of the said Corporation; and they shall also have full power to make such calls for money from the several proprietors of shares, for the time being, as is hereinbefore provided for, and to sue for, recover and get in all such calls, whether already made or hereafter to be made, and to cause and declare the said shares to be forfeited to the said Corporation, in case of non-payment, on such terms and in such way as they shall see fit to prescribe by any By-law, and in any action to be brought to recover any money, due on any call, made before or after the passing of this Act, it shall not be necessary to set forth the special matter in the declaration, but it shall be sufficient to allege that the defendant is a holder of one share or more in the said stock (stating the number of shares) and is indebted to the Corporation in the sum to which the calls in arrear shall amount (stating the number and amount of such calls) whereby an action hath accrued to the Corporation by virtue of this Act; and it shall be sufficient to maintain such action to prove by any one witness that the defendant, at the time such call was made, was a Shareholder in the number of shares alleged, and that the calls sued for were made and notice thereof given in conformity with the provisions of this Act or the Articles of Association, and it shall not be necessary to prove the appointment of the Directors nor any other matter whatsoever; that the said Directors shall and may use and affix, or cause to be used and affixed the common seal of the said Corporation to any documents which in their judgment may require the same, and any act, deed or contract bearing such seal and signed by the President or Chairman (or by any two Directors,) and countersigned by the Cleric or Secretary, shall be held to be the act or deed of the Corporation; that they may appoint and employ such agents, gardeners, superintendents and other officers and servants of the said Corporation under them as to the said Directors may seem fit, and may fix the remuneration of such officers and servants and remove them at pleasure, and may make any payments and enter into contracts for the execution of the purposes of the said Corporation, and for all other matters necessary for the transaction of its affairs; may keep and hire hearses and mourning coaches, with the requisite horses for conveying corpses, mourners and other persons to and from the Cemetery, the same to be free of toll of any kind on all occasions, going and coming, and fix the rates for the use thereof, and may exercise all acts of ownership over the land, property and effects of the said Corporation; may institute and defend, in the name of the said Corporation, all suits at law, and shall and may have power to do all things whatsoever which may be requisite or necessary to give effect to the objects of the Corporation, and to vest the property and funds of the said Association in the Corporation hereby erected; that they shall declare dividends of the profits of the said Corporation, when and as often as the state of the funds thereof may permit, but not in any case to exceed eight *per centum per annum* on the Capital Stock actually paid into the funds of the said Corporation; and they may appoint when special meetings of the Shareholders shall be held, and determine on the mode of giving notice thereof, and of the manner in which the Shareholders may call or require such special meetings to be called: and they

shall have power to make By-laws and Regulations for the solemn and decent interment of the dead, for the government and control of the officers and servants of the said Corporation respectively; and shall also have power to make and frame all other By-laws, Rules and Regulations for the management of the business of the said Corporation, in all particulars and details thereof, whether hereinbefore specially enumerated or not, and the same also at any time to alter, change, modify and repeal, which said by-laws, rules and regulations shall be submitted for approval, rejection or alteration by the Stockholders, at the next general meeting, or at a special meeting to be called by the said Directors, and when and as so ratified and confirmed shall be put in writing and duly recorded in the minutes of the said Corporation, and be binding upon and observed and taken notice of by all members of the said Corporation: And any copy of the said By-laws, or any of them, under the hand of the Secretary, clerk or other officer of the said Company, and having the seal of the Corporation affixed to it, shall be received as *primâ facie* evidence of such By-laws in all Courts in this Province.

XIII. And be it enacted, That the said Capital Stock may be increased from time to time to the amount of ten thousand pounds should a majority of votes at a Special Meeting of the Stockholders called for that purpose, composed of persons representing at least two-thirds of the Capital Stock, consider it necessary, by the admission of new Members, or by the addition to the stock of the Members then composing the said Association, upon such terms and conditions and in the manner to be approved and agreed upon; and the capital to be raised by new shares shall be in all respects part of the Capital Stock of the said Association; and every Shareholder of such new stock shall be a Member of the said Corporation, and be entitled to all and every the same powers, privileges and rights as the persons who are now Shareholders, in proportion to the interest or number of shares which he, she or they may acquire, and to the amount of calls paid thereon; and shall also be liable to the same obligations, and stand interested in all the profits and losses of the said undertaking in proportion to the sum he, she or they shall subscribe and pay thereto as effectually as if such other or further sum had been originally raised as part of the said sum of five thousand pounds.

XIV. And be it enacted, That the said Directors may cause the said tract of ground, and such other tracts of ground as may be acquired under the authority of this Act, for the purpose, of the said Cemetery, to be surveyed and divided into lots, a plan of which shall always remain in the possession of the said Directors, and be subject to the inspection of any owner of the said lots, or of any exclusive privilege, and the said Directors may cause the same to be ornamented and improved, and build or cause and permit to be built such Chapel or Chapels thereon, as may be necessary for the purposes of the said Association.

XV. And be it enacted. That the said Directors shall set apart such parts of the Cemetery as they think fit, for the purpose of selling the same, or of granting an exclusive right of burial in any part of the Cemetery so set apart, and they may sell and dispose of in perpetuity or for a limited time, the exclusive right of burial in lots of ground as well as the said lots in the Cemetery, to Protestants and for the burial of Protestants therein only, at public competition or by private agreement, of such dimensions as they may see fit, and on such terms and conditions as they may think proper: Provided always, that it shall be in the discretion of the Directors to allow of the interments of

others; and the said Association may likewise sell the right of placing any monument or gravestone in the Cemetery, or any tablet or monumental inscription, on the walls of any Chapel or other building within the Cemetery: and upon the sales of the said lots there shall be no *lods et ventes* or mutation fines due or payable to the Seigniors: And provided always, that no body shall be buried in any lot or in any place wherein the exclusive right or burial shall have been granted by the Association, except with the consent of the owner for the time being, of such lot or exclusive right of burial.

XVI. And be it enacted, That no body shall be buried in any vault under any Chapel of the Cemetery, or within fifteen feet of the outer wall of any such Chapel.

XVII. And be it enacted, That the grant of any lot or of the exclusive right of burial in any part of the Cemetery, either in perpetuity or for a limited time, and of the right of one or more burials therein, or of placing therein any monument, tablet or gravestone, may be made in the form in the Schedule to this Act annexed, or to the like effect: Provided always, that nothing herein contained is to prevent the Association from inserting such other provisions as the interest of the Association may require.

XVIII. And be it enacted, That a Register of all such grants shall be kept by the Clerk of the Association, and within fourteen days after the date of any such grant, an entry or memorial of the date thereof, and of the parties thereto, and also of the consideration for such grant, and also a proper description of the ground described in such grant, so as the situation thereof may be ascertained, shall be made by the said Clerk in such Register; and such Clerk shall be entitled to demand such sum as the Association think fit, not exceeding two shillings and six pence for every such entry or memorial; and the said Register may be perused at all reasonable times by any Grantee or Assignee of any right conveyed in any such grant, upon payment of the sum of one shilling, to the Clerk of the Association.

XIX. And be it enacted, That the said plan of the Cemetery shall be made upon a scale sufficiently large to show the situation of every lot and burial-place in all the parts of the Cemetery, so set apart, and in which an exclusive right of burial has been granted, and all such lots and burial-places, shall be numbered, and such numbers shall be entered in a book to be kept for that purpose, and such book shall contain the names and descriptions of the several persons to whom the exclusive right of burial, in any such place of burial has been granted by the Association; and no place of burial, with exclusive right of burial therein shall be made in the Cemetery, without the same being marked out in such plan, and a corresponding entry made in the said book, and the said plan and book shall be kept by the Clerk or other Officer of the said Association, under the direction of the said Directors.

XX. And be it enacted, That the exclusive right of burial in any such place of burial, shall, whether granted in perpetuity or for a limited time, be considered as the personal estate of the Grantee, and may be assigned in his lifetime, or bequeathed by his Will, but neither the same, nor any of the said lots shall be seized or attached for debt; and the said lots may be assigned in like manner.

XXI. And be it enacted, That an entry of such portion of every Will, whereby the said lot or lots or exclusive right of burial within the Cemetery is or are bequeathed, with a certificate of the same being a true and perfect extract, so far as respects such lot or lots and such exclusive right of burial, signed by the person having the legal custody thereof, shall within six months after the death of the Testator, be made in the said Register, and until such entry no right shall be acquired to any lot or lots or the exclusive right of burial aforesaid.; and for every such entry the Clerk of the Association shall be entitled to demand such sum as the Association may prescribe, not exceeding two shillings and six pence.

XXII. And be it enacted, That every such assignment shall within six months after the execution thereof, if executed in Lower Canada, or within six months after the arrival thereof in Lower Canada, if executed elsewhere, be produced to the Clerk of the Association, and an entry or memorial of such assignment shall be made in the Register by the Clerk of the Association, in the same manner as that of the original grant; and until such entry or memorial, no right of burial shall be acquired under any such memorial; and for every such entry or memorial the Clerk shall be entitled to demand such sum as the Association may prescribe, not exceeding two shillings and six pence.

XXIII. And be it enacted, That every part of the Cemetery shall be inclosed by walls or other sufficient fences or railings of the height of eight feet at least.

XXIV. And be it enacted, That the said Corporation shall keep the Cemetery and the buildings and fences thereof in complete repair, and in good order and condition, out of the moneys to be received by them in virtue of this Act.

XXV. And be it enacted, That the Corporation shall make all necessary and proper sewers and drains in and about the Cemetery, for draining it and keeping it dry; and they may from time to time, as occasion requires, cause any such sewer or drain to open into any existing sewer, with the consent in writing of the persons having the management of the street or road, and of the owners and occupiers of the lands through which such opening is made, doing as little damage as possible to the road or ground wherein such sewer or drain may be made, and restoring it to the same or as good condition as it was in before being disturbed.

XXVI. And be it enacted, That if the said Corporation at any time cause or suffer to be brought or to flow into the River Saint Lawrence above low water mark, or into any spring, well, stream, canal, reservoir, aqueduct, pond or watering place, any offensive matter from the Cemetery, whereby the water therein shall be fouled, they shall forfeit for every such offence the sum of twelve pounds ten shillings currency.

XXVII. And be it enacted, That the said penalty with full costs of suit may be recovered by any person having right to use the water fouled by such offensive matter by a civil action in any Court of competent jurisdiction; provided always, that the said penalty shall not be recoverable unless the same be sued for during the continuance of the offence or within six months after it has ceased.

XXVIII. And be it enacted, That in addition to the said penalty of twelve pounds ten shillings (and whether the same be recovered or not) any person having right to use the water fouled by such offensive matter, may sue the said Corporation in a civil action in any Court of competent jurisdiction, for any damage specially sustained by him by reason of the water being so fouled; or if no special damage be alleged, for the sum of two pounds ten shillings for each day during which such offensive matter is brought or flows as aforesaid after the expiration of twenty-four hours from the time when notice of the offence is served on the said Corporation by such person.

XXIX. And be it enacted, That the said Corporation shall make regulations for ensuring that all burials within the Cemetery are conducted in a decent and solemn manner.

XXX. And be it enacted, That every person who shall play at any game or sport, or discharge fire arms, save at a military funeral, in the Cemetery, or who shall wilfully and unlawfully disturb any persons assembled in the Cemetery for the purpose of burying any body therein, or who shall commit any nuisance within the Cemetery, shall forfeit to the Association for every such offence a sum not exceeding five pounds.

XXXI. And be it enacted, That every person who shall wilfully destroy or injure any building, wall or fence belonging to the Cemetery, or destroy or injure any tree or plant therein, or who shall daub or disfigure any wall or fence thereof, or put up any bill therein, or on any wall or fence thereof, or wilfully destroy, injure or deface any monument, tablet, inscription or grave stone within the Cemetery, or do any other wilful damage therein, shall forfeit to the Association for every such offence, a sum not exceeding five pounds, and the penalties imposed by this and the foregoing section may be recovered before any Justice of the Peace or Magistrate, in a summary manner, as prescribed by an Act passed in the fourth and fifth years of Her Majesty's Reign, intituled, *An Act for consolidating and amending the Laws in this Province relative, to malicious injuries to property*: Provided always, that over and above the said penalties the said Association may recover the damages sustained.

XXXII. And be it enacted, That the said Association may take down and remove any grave stone, monument, tablet, or monumental inscription which shall have been placed within the Cemetery without their authority.

XXXIII. And be it enacted, That this Act shall be a Public Act, and as such shall be judicially noticed by all Courts, Judges, Magistrates, Justices of the Peace and others whom it may concern, without being specially pleaded or proved.

Schedules  
(To which the foregoing Act refers.)  
Form of Grant of Right of Burial.

By virtue of An Act to incorporate the Mount Hermon Cemetery, We, the said Mount Hermon Cemetery, in consideration of the sum of \_\_\_\_\_ to us paid by \_\_\_\_\_ of \_\_\_\_\_



do hereby grant unto the said \_\_\_\_\_ the lot or exclusive right of burial, (or, the right of burying bodies, as the case may be,) or, the right of placing a monument, tablet or grave stone in (here describe the ground intended for the exclusive burial or for placing a monument, tablet, or grave stone, as the case may be, so as to identify the same, and if a lot or place of exclusive burial, add numbered \_\_\_\_\_ on the plan of the Cemetery, made in pursuance of the said Act,) to hold the same to the said \_\_\_\_\_ in perpetuity, (or, the period agreed upon) for the purpose of burial, (or, as the case may be.)

Given under our Common Seal, (or, under our hands and seals, as the case may be,) this \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord

Form of Assignment of Right of Burial.

I, A. B. of \_\_\_\_\_ in consideration of the sum of \_\_\_\_\_ paid to me by C. D. of \_\_\_\_\_ do hereby assign unto the said C. D. the lot or exclusive right of burial in (as the case may be,) (here describe the place) and numbered \_\_\_\_\_ on the plan of the Cemetery, made in pursuance of An Act to incorporate the Mount Hermon Cemetery, which was granted to me, (or, unto A. B. of \_\_\_\_\_,) in perpetuity, (or, as the case may be) by the said Mount Hermon Cemetery, by a Deed of Grant, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ and all my estate, title and interest therein, to hold the same unto the said C. D. in perpetuity, (or, as the case may be) for the remainder of the period for which the same was granted by the said Company, subject to the conditions on which I held the same immediately before the execution hereof.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_

Signature [L. S.]