

Laws of Her Majesty's Province of Upper Canada, passed in the year 1850. Toronto: Stewart Derbyshire & George Desbarats, 1850.

13 & 14 Victoria – Chapter 140

An Act to incorporate the Cataraqui Cemetery Company. 10th August, 1850.

Whereas it hath become necessary to the health of the City of Kingston that a Public Cemetery should be established near to, but without the limits thereof, and the persons hereinafter named have associated themselves together for the purpose of establishing such Cemetery, and have prayed that they and their successors be incorporated and divers powers conferred on them for the purpose aforesaid, and it is expedient to grant the prayer of the said Petition: 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 Thomas Kirkpatrick, Alexander Campbell, Samuel Rowlands, James J. Burroughs, Maxwell W. Strange, Neil McLeod, Thomas A. Corbett, William G. Hinds, William Allan Geddes, and such others as are now and may hereafter become subscribers in the undertaking hereinafter mentioned, and their successors for ever, shall be and are hereby constituted a body politic and corporate in fact and in name, by the name of "The Cataraqui Cemetery Company."

II. And be it enacted, That the capital of the Company shall be Two thousand pounds, which shall be divided into shares of Twenty-five pounds each, and shall be transferable on the Books of the Corporation, in such manner as the Corporation shall by its By-laws direct.

III. And be it enacted, That it shall be lawful for the said Corporation to acquire, take, and hold a lot or tract of land within the Township of Kingston, not exceeding two hundred acres; and to sell, or otherwise dispose of such land or lots to be used exclusively as a Cemetery or place of Burial for the dead: Provided always, that the deed of sale of any lot in the said Cemetery or place of Burial shall be in the form of the Schedule A to this Act annexed; And provided also, that the real estate of the said Corporation, and the said lots when conveyed by the Corporation to individual proprietors, shall be exempt from assessment and taxation, and shall not be liable to be sold under execution, Or to be subject to be applied to the payment of debts by any bankrupt, insolvent or other law.

IV. And be it enacted, That all moneys received for or on account of the said Capital Stock, shall be first applied by the said Corporation to the payment of the purchase money of the land which may be acquired by the Corporation; and any residue thereof, together with at least one half of the money obtained for sales of lots, shall be applied to improving or embellishing such land as a Cemetery or Burial Ground.

V. And be it enacted, That the said Thomas Kirkpatrick and Alexander Campbell shall be Commissioners to receive subscriptions to the said Capital Stock; they shall open Books at such places, and after having given such notice, as they deem expedient; they shall, when the sum of one thousand pounds currency shall have been subscribed, call a meeting of the subscribers to elect from among the Stockholders five Directors; and such election shall be made by such Stockholders, at such time and place as such Commissioners may have appointed,—each share, represented personally or by proxy, entitling the Stockholder owning it to one vote; the Commissioners shall certify under their hands the names of the parties elected Directors, and shall hand over to them the Books, Papers, Moneys and other effects of the said Corporation, which may be in their hands; the Directors then chosen shall fix the time and place of their first meeting, and a new election of five Directors shall afterwards be made annually on the same day of the week, in the same month as such first election may be made on the Directors in office fixing the day, and calling the meeting accordingly.

VI. And be it enacted, That the Directors or a majority of them, shall call in the capital stock by such instalments and at such times as they or a majority of them shall deem fit, giving fifteen days public notice in a public newspaper, of such times of payment and the amount of instalment required; and shall manage and control all the affairs of the said Corporation until the capital stock be extinguished, and a Board of Trustees appointed as hereinafter provided.

VII. And be it enacted, That whenever the original Stockholders in the said Corporation shall have been reimbursed, either by sale to them of lots in the said Cemetery, or otherwise, in the amount of stock originally taken and paid for by them, or earlier, the said Stockholders may, if they shall see fit, surrender and extinguish their Stock in such manner as the Board of Directors shall prescribe; and all persons who, then, or thereafter, shall be or become proprietors of lots or parcels of ground conveyed to them or their predecessors in title, by the said Corporation, shall become and be members of the said Body Corporate.

VIII. And be it enacted, That the estate, property and affairs of the said Corporation shall, after the said capital stock is extinguished, be managed by five Trustees, a majority of whom shall constitute a quorum capable of doing business; the persons constituting the Board of Directors at the time of the extinguishment of the said capital stock, shall constitute the first Board of Trustees, and shall remain in office until the election of a new Board; the proprietors of lots shall select from amongst themselves five Trustees on the first Monday in January in every year, to hold office until their successors shall in like manner be elected: Notice of the election shall be given in three several newspapers published in Kingston; and shall be by ballot: Provided always, that each lot shall entitle the proprietor thereof to one vote, and such vote may be given in person or by proxy; the Trustees may fill any vacancy from amongst the proprietors of lots, should any occur during the year of office: the annual meeting of the proprietors of lots shall be held on the first Monday in January, in every year, when the Trustees going out of office shall make a full report of the management, condition and fiscal concerns of the Corporation.

IX. And be it enacted, That it shall be lawful for the said Corporation to appoint such officers and servants of the Corporation as they shall think expedient, to make and frame By-laws for the

government and control of the said officers, and also to make and frame all other By-laws, Rules and Regulations for the management of the business of the Corporation in all its particulars and details whether herein specially enumerated or not, and the same at any time to alter, modify and repeal; Provided that no such By-laws shall interfere with the rules in the Schedule A to this Act annexed, nor be inconsistent with any other of the provisions of this Act; and any copy of the said By-laws purporting to be under the hand of the Clerk or Secretary of the said Corporation shall be received as *prima facie* evidence of such By-laws in all Courts in this Province.

X. And be it enacted, That all lots when conveyed and designated as lots by the said Corporation shall be indivisible, but may be owned and held in undivided shares. One half of the proceeds of all sales shall be applied towards the payment of the purchase money of the land acquired by the said Corporation, and the residue shall be applied to preserving, improving, and embellishing the said land as a Cemetery, and to the incidental expenses of a Cemetery establishment; and after payment of such purchase money, the proceeds of all future sales shall be applied to the preservation and improvement of the said Cemetery and incidental expenses thereof and to no other purpose whatever.

XI. And be it enacted, That any person who shall wilfully destroy, deface, injure, or remove any Tomb, Monument, Grave-Stone, or other structure, placed in the Cemetery aforesaid, or any fence, railing, or other work for the protection or ornament of the said Cemetery, or of any Tomb, Monument, Grave-Stone, or other structure aforesaid; or any plot or parcel or ground within the Cemetery, or shall wilfully destroy, cut, break or injure any tree, shrub, or plant within the said Cemetery, or play at any game or sport, or discharge fire-arms, (save at a Military funeral) in the said Cemetery, or who shall wilfully and unlawfully disturb any persons assembled there for the purpose of burying any body therein, or who shall commit any nuisance in the aforesaid Cemetery, shall be guilty of a misdemeanor, and may, upon conviction before a Justice of the Peace, or other competent authority, be fined any sum not less than Twenty shillings nor more than Twenty pounds, and in default of payment of such fines, such person may be committed to jail for any period not less than eight days or more than one month; and may also be sued by the said Corporation for any such trespass whether committed in a private lot or otherwise and in any case in which the corporation is a party, the Members of the said Corporation shall be competent witnesses.

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

XIII. And be it enacted, That nobody shall be buried in any vault under any Chapel or other building in the said Cemetery or within fifteen feet of the outer wall of any such Chapel or building.

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

XV. And be it enacted. That the said Corporation shall keep the said 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.

XVI. And be it enacted, That the said Corporation shall make all proper and necessary Sewers and Drains in and about the said 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.

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

XVIII. And be it enacted, That the said penalty, with full costs of suit, may be recovered by any person having a 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.

XIX. 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.

XX. And be it enacted, That it shall be lawful for the said Corporation to take and hold by donation, grant or devise, or bequest of property upon trust, not exceeding in value the sum of five thousand pounds currency, and to sell, exchange, convey or otherwise dispose of the same, and to apply the same or the proceeds or income thereof to the improvement or embellishment of the Cemetery, or of any lot or lots therein.

XXI. And be it enacted, That this Act shall be a Public Act.

Schedule A.

Form of Deed of Lot in the Cataragui Cemetery.

Know all men by these presents, that the Cataraqi Cemetery Company, in consideration of the sum of pounds to them paid by _____ of _____ in the _____ the receipt whereof is hereby acknowledged, do hereby grant, bargain and sell to the said _____ his heirs and assigns that lot of land in the Cemetery of the said Corporation called "The Cataraqi Cemetery" situate in the Township of Kingston, in the County of Frontenac, in Canada West, delineated and laid down on the registered map or plan of the said Cemetery, as lot No. _____ and containing superficial feet, more or less, to have and to hold the above granted premises to the said his heirs and assigns for ever, subject however, to the limitations and conditions, and with the privileges specified in the rules of the said Cemetery, on the back hereof indorsed, and the said the Cataraqi Cemetery Company hereby covenant with the said _____ his heirs and assigns, that they are actually and lawfully seized of the land hereby granted, that they have a right to sell the same for the purposes expressed in the rules hereon indorsed; that the said premises are free from incumbrances, and that they will warrant and defend the same to the said _____ his heirs and assign's for ever.

In testimony whereof, the said Corporation have caused this deed to be signed by the Chairman of their Trustees for the time being, and sealed with their corporate Seal, the _____ day of _____ A. D. 185_____.

Rules to be Indorsed on Deed.

1. All lots shall be held in pursuance of the Act of Incorporation, and shall not be held or used for any other purpose than as a place of burial for the dead.
2. The proprietor of each lot shall have a right to enclose the same by any railing not composed of wood, or by a wall not thicker than one foot, nor more than two feet, in height above the surface.
3. Proprietors shall not allow interments to be made in their lots for a remuneration.
4. No disinterments shall be allowed without permission from the Corporation.
5. The Proprietor of each lot shall have a right to erect any stones, monuments or sepulchral structures therein, and to cultivate trees, shrubs and plants in the same; but no trees growing within any lot shall be cut down or removed without the consent of the Trustees.
6. If any trees or shrubs situate on any lot shall, by means of their roots, branches or otherwise, become detrimental to the adjacent lots, or avenues, or dangerous or inconvenient to passengers; it shall be the duty of the Corporation and they shall have the right to enter the lot and remove such trees or shrubs.
7. If any monument, effigy or enclosure, or any structure whatever, or any occupation, in or upon any lot, shall be determined by the Trustees to be improper or offensive, or injurious to the

appearance of the surrounding lots, the said Trustees shall have the right to enter upon Such lots and remove the said offensive or improper object or objects.

8. It shall rest with the Trustees to lay out and alter the walks and avenues, and to make rules and regulations for the government of the Grounds, with which rules and regulations all proprietors of lots shall comply.

9. Proprietors of lots and their families shall be allowed access to the Cemetery at all times, subject to the rules of the Corporation, as they may be adopted by the Trustees.