

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

13 & 14 Victoria – Chapter 76

**An Act to authorize the formation of Companies for the establishment and management of Cemeteries in Upper Canada. 10th August, 1850.**

Whereas it hath become necessary to the health of many Towns in Upper Canada, that Public Cemeteries should be established near to, but without the limits of the said Towns, upon the plan now adopted by the Inhabitants of many of the Cities in Europe and America: And whereas the delay and expense incident upon obtaining a special Act for each Company operate as a great discouragement to persons desirous of founding such Cemeteries: 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 any number of persons, not less than twenty respectively, may, in Upper Canada, form themselves into a Company under the provisions of this Act for the purposes aforesaid.

II. And be it enacted, That when any number of persons not less than twenty shall have subscribed, and paid in a sufficient quantity of stock to amount to a sum adequate in their judgment to the purchase of the ground required for a Cemetery, and shall have executed an instrument according to the form in the Schedule A, to this Act contained, and shall have paid to the Treasurer of such intended Cemetery twenty-five per cent, upon the capital stock intended by such Company to be raised for the purpose aforesaid, which sum shall not be less than that required for the purchase of the grounds necessary for such Cemetery, and shall have registered such instrument at full length, together with a receipt from the Treasurer of such Company, for such first instalment of twenty-five per cent, as aforesaid, with the Register of the County in which the grounds to be purchased shall be situate, such Company shall thenceforth become and be a body corporate by such name as shall be designated in the instrument so to be registered as aforesaid; and by such name, they and their successors shall and may have perpetual succession, and shall be capable, both at law and in equity, of suing and being sued, of impleading and being impleaded, answering and being answered unto, defending and being defended in all Courts of law and equity, and places whatsoever, in all manner of actions, suits, complaints and causes whatsoever; and they and their successors may have a common seal, and the same may make, alter and change at their will and pleasure, and they and their successors by their corporate name, shall be capable of taking, purchasing, having, holding, conveying, selling and departing with, any piece or parcel of land in Upper Canada to be used exclusively as a Cemetery, or a place for the burial of the dead.

III. And be it enacted, That the affairs, property and concerns of every such Company which shall or may be formed under the provisions of this Act, shall be managed by nine Directors, a majority

of whom shall form a quorum capable of doing business, which said Directors shall be chosen by ballot from among the subscribers to the said instrument so to be registered as aforesaid, and thereafter to be annually elected by the said stockholders on the third Monday in January in each and every year; and that upon the first and every such election of Directors, each shareholder shall be entitled to one vote for every share he may hold or be possessed of up to ten, and one vote for every five shares above ten; but no stockholder shall be allowed to vote at any election unless he shall have paid at least ten shillings upon each lot or share he may hold.

IV. And be it enacted, That every lot or share in the said Cemetery shall contain not less than one hundred superficial feet, and every person holding such lot or share, and having paid as before provided, shall be deemed and taken to be a shareholder, and every shareholder who shall have paid in a sum not less than two pounds, shall be eligible for a Director.

V. And be it enacted, That the Directors, or a majority of them, shall, at their first meeting, elect one of their number to be President of the said Company, and the President, if present, (or if he be not present, then some Director chosen for the occasion) shall preside at all meetings, and in cases of equality shall have the casting vote: And the said Directors may pass By-laws for the laying out, selling, and management of the grounds required for the Cemetery,—for regulating the erection of tombs, monuments, or grave-stones therein, and for empowering the President to execute deeds or conveyances of plots of ground in the Cemetery to shareholders,—and shall keep a book in which shall be recorded all By-laws and proceedings, and to which any person shall have access for the purpose of searching and making extracts therefrom without payment of any fee whatsoever.

VI. And be it enacted, That the real estate of any Company formed under the provisions of this Act, and the lots or plots when conveyed by the Company to individual proprietors, shall be exempt from taxation or assessment of any kind, and not liable to be seized or sold on execution, or attached or applied to the payment of debts by assignment under any bankrupt or insolvent law that all lots or plots of ground when conveyed and numbered as lots by any Company formed under the provisions of this Act, shall be indivisible, but, may afterwards be held and owned in undivided shares: and one half of the proceeds of all sales made by any such Company shall be first applied to the payment of the purchase money of the land acquired by such Company, and the residue thereof to preserving, improving and embellishing the land as a Cemetery, or burial ground, and to the incidental expenses of the Cemetery Establishment: and after payment of such purchase money, the proceeds of all future sales shall be applied to the preservation, improvement and embellishment of the Cemetery, and the incidental expenses thereof and to no other purpose whatever: And no dividend or profit of any kind shall be paid by any such Company to any member or members thereof: Provided nevertheless, that the Directors of said Company shall be personally liable for any judgment recovered against the said Company.

VII. And be it enacted, That any Company formed as aforesaid shall furnish graves for strangers and the poor of all denominations, free of charge, on the certificate of a Minister or Clergyman of the denomination to which such person may have belonged, that the relatives of the deceased are poor and cannot afford to purchase a lot in the Cemetery; and the Directors of any such Company

may sell any lot of any size whatever, but no party being proprietor of a lot containing a less quantity than one hundred superficial feet, shall thereby become a Member of the said Company, or have any vote in the management of the affairs thereof.

VIII. And be it enacted, That the lots sold by any Company formed as aforesaid, shall be conveyed by a Deed, in the form in the Schedule to this Act marked B, which conveyance shall not require to be registered for any purpose whatever, nor shall it be affected by any Registry Act now in force in Upper Canada, nor shall any judgment, mortgage or incumbrance in any wise subsist on any lot so conveyed.

IX. And be it enacted, That any person who shall wilfully destroy, mutilate, deface, injure or remove any tomb, monument, grave-stone or other structure placed in any Cemetery, or any fence, railing or other work for the protection or ornament of any Cemetery, or of any tomb, monument, grave-stone or other structure aforesaid, or of any Cemetery lot within any Cemetery, or shall wilfully destroy, cut, break or injure any tree, shrub or plant, within the limits of any Cemetery, or play at any game or sport, or discharge fire arms (save at a military funeral) in any such Cemetery, or who shall wilfully and unlawfully disturb any persons assembled for the purpose of burying any body therein, or who shall commit any nuisance in any such Cemetery, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof before any Justice of the Peace, or other Court of competent jurisdiction, be punished by a fine of not less than one pound nor more than ten pounds, according to the nature of the offence; and such offender shall also be liable to an action of trespass, to be brought against him in any Court of competent jurisdiction, in the name of any such Corporation aforesaid, to pay all damages which shall have been occasioned by his unlawful act or acts; which money, when recovered, shall be applied under the direction of the Directors for the reparation and reconstruction of the property destroyed, and members of any such Company may be competent witnesses in such suits.

X. And be it enacted, That every Company formed as aforesaid shall make regulations for ensuring that all burials within its Cemetery are conducted in a decent and solemn manner.

XI. And be it enacted, That no body shall be buried in any vault under any chapel or other building in any such Cemetery, nor within fifteen feet of the outer wall of any such chapel or building.

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

XIII. And be it enacted, That every Company formed as aforesaid shall keep its Cemetery, and the buildings and fences thereof, in complete repair and in good order and condition out of the moneys to be received by it in virtue of this Act.

XIV. And be it enacted, That every Company formed as aforesaid shall make all proper and necessary sewers and drains in and about its 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 or 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.

XV. And be it enacted, That if any Company formed as aforesaid 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 their Cemetery, whereby the water therein shall be fouled, the Company so offending shall forfeit for every such offence the sum of Twelve Pounds Ten Shillings currency.

XVI. 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.

XVII. 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 Company 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 upon the Company by such person.

XVIII. And be it enacted, That the Directors of any Company formed under the provisions of this Act shall have full power to call for instalments on the sums which shall be subscribed for, and to appoint a time for the payment thereof, and if the same shall not then be paid, the right of any subscriber, and every instalment he may have formerly paid, shall be forfeited, and he shall be held not to have subscribed, unless the Directors shall think it expedient to remit such forfeiture, which they may do in their discretion, if the instalments be paid with interest within one year after the day when it ought to have been paid.

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

#### Schedule A.

Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_ We, the undersigned, Stock-holders, met at \_\_\_\_\_ in the County of \_\_\_\_\_ in the Province of \_\_\_\_\_ Canada, and resolved to form ourselves into a Cemetery Company, to be called \_\_\_\_\_ according to the provisions of an Act of Parliament, intituled, An Act, &c. (insert the title of this Act) and we do hereby agree that the Capital Stock of the said Company shall be \_\_\_\_\_ pounds, to be divided into shares of \_\_\_\_\_ pounds each, entitling the holder to one hundred superficial feet; and we, the

undersigned Stockholders, do hereby agree to accept and take the number of Shares set by us opposite to our respective signatures, and we do hereby agree to pay the calls thereon, according to the provisions of the said Act, and of the Rules, Regulations and By-laws of the said Company, to be made in that behalf.

Name.	No. of Shares.	Amount.

B.

Know all men by these presents, That the \_\_\_\_\_ Cemetery, in consideration of \_\_\_\_\_ Pounds, paid to them by \_\_\_\_\_, of \_\_\_\_\_, the receipt whereof is hereby acknowledged, do grant unto the said \_\_\_\_\_, his heirs and assigns, \_\_\_\_\_ Lot of Land in the Cemetery of the said Company, called \_\_\_\_\_, and situate in the County of \_\_\_\_\_, which Lot is delineated and laid down on the map of the said Cemetery, and which said Lot is therein designated by the name of \_\_\_\_\_ containing by admeasurement \_\_\_\_\_ superficial feet; To have and to hold the herein above named premises, &c.