

No. XIX.

MELBOURNE
GENERAL CEMETERY.An Act for the establishment and regulation by
Trustees of a General Cemetery near the City
of Melbourne. [19th September, 1850.]

Preamble.

WHEREAS the Cemeteries or Burial Grounds within the City of Melbourne and the suburbs thereof are of limited extent and insufficient for the increased and increasing population thereof and it is intended by Her Majesty the Queen to grant certain land in the neighbourhood of the City of Melbourne for the purpose of the same being used as a General Cemetery for burying the dead of all denominations of religious faith to be called the Melbourne General Cemetery And whereas it is expedient that the same should be vested in Trustees with perpetual succession who shall have power to regulate the use thereof and to do and cause to be done all such acts matters and things as may be requisite or proper for the preservation of such Cemetery and all buildings and erections thereon and of ornamenting the grounds thereof in a suitable manner Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That after the passing of this Act Trustees not fewer than three in number to be appointed by the Governor for the time being of the said Colony and their successors to be appointed as hereinafter is provided shall have power to hold for ever any such lands as by Her Most Gracious Majesty the Queen may be conveyed to the said Trustees by Deed of Grant from the Crown for such General Cemetery as aforesaid upon such Trusts as in the said Deed of Grant shall be declared and that thereupon the land so granted together with all erections thereon and the rights easements and appurtenances to the same belonging shall be and become remain and continue vested in the said Trustees and their successors in the said Trust for ever upon the Trusts in the said Deed of Grant to be declared and subject to the provisions of this Act.

Trustees to be
appointed by the
Governor.Trustees may hold
land &c.

6 Geo. IV. No. 21.

Section 10 thereof
inoperative as to
Melbourne.Trustees may be
removed.

2. Whereas by a certain Act of the Governor and Council of New South Wales passed in the sixth year of the reign of His late Majesty King George the Fourth intituled "*An Act for better regulating and preserving Parish and other Registers of Births Baptisms Marriages and Burials in New South Wales and its Dependencies including Van Diemen's Land*" it is amongst other things enacted that no burial shall take place in any burial ground within the limits of any town otherwise than in any burial ground which may be set apart for such purpose and which burial ground must be distant one mile at the least from any town or township and it is expedient to except any land set apart for the purposes of this Act from the operation of the said Act as respects the distance from the City of Melbourne Be it enacted That nothing in the said Act contained shall be deemed to prevent the use of any land conveyed to the said Trustees for the purposes of this Act notwithstanding that the said land or any part thereof may be within the distance of one mile from the boundaries of the said City.

3. And be it enacted That the Governor for the time being of the said Colony shall have power from time to time to remove from the said Trust any Trustees of the said Cemetery as and when he shall think proper and also upon the death resignation or removal of any Trustee appointed under this Act to appoint another in his place and stead.

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4. And be it enacted That the Trustees of the said Cemetery shall have power to lay out the said land so to be granted as aforesaid in such manner as may be most convenient for the burial of the dead and to embellish the same with such walks avenues roads trees and shrubs as may to them seem fitting and proper and to inclose the same with proper and sufficient walls rails fences pallisades gates and entrances 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 the said Cemetery and its walls and fences and all monuments tomb-stones inclosures buildings erections walls and shrubberies therein and belonging thereto and shall lay out and expend all moneys to be received by them under this Act in and about the matters aforesaid and in ornamenting the said Cemetery with trees shrubs and plants and in the erection of such buildings and improvements in and to the said Cemetery from time to time as they the said Trustees shall think proper.

Grounds to be laid out.

5. And be it enacted That the Trustees of the said 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 aforesaid and also for determining and directing the order and position of all graves and vaults to be made in the said Cemetery and for protecting the buildings monuments shrubberies plantations and enclosures therein and thereof from destruction or damage and shall have power to prosecute all persons who shall or may at any time do or cause to be done any damage to any such buildings monuments tomb-stones shrubberies plantations or inclosures Provided nevertheless that the said Trustees 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 original distribution of the said land made or intended to be made by the grant thereof to and amongst separate and distinct religious denominations or communions Provided further that no rite or ceremony shall be performed in any portion of such Cemetery set apart for any particular denomination except according to the usage of such denomination and by a duly recognized Minister of the same.

Rules and regulations to be made by Trustees

but such rules &c. not to interfere with the performance of religious ceremonies in the burial of the dead.

Proviso.

6. Provided always and be it enacted That it shall and may be lawful for the Ministers of any denomination for which any portion of such Cemetery shall be specially set apart to have free access and admission to such portion of the said Cemetery at all times as they respectively shall think fit and freely to exercise their spiritual functions therein without any hindrance or disturbance of the Trustees of the said Cemetery or any person whatsoever.

Spiritual functions may be exercised.

7. And be it enacted That it shall and may be lawful for the Trustees of the said Cemetery to permit any vault to be dug and made in the said Cemetery and any monument or tomb-stone to be erected or placed in such parts of the said Cemetery as they may think proper upon payment to them by the person or persons desiring to dig and make such vault or to erect and place such monument or tomb-stone of such charges as shall from time to time be established and varied by the said Trustees with the concurrence and approval of His Excellency the Governor and published in the *Port Phillip Government Gazette* and that any person or persons so digging and making such vault or erecting and placing such monument in such Cemetery by and with such permission as aforesaid and upon payment of the charges aforesaid shall be entitled to have maintain and keep up such vault monument or tomb-stone according to the terms of such permission to and for

Vaults to be dug and monuments or tomb-stones to be erected.

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Plans of monuments
to be exhibited.

for the sole and separate use of such person or persons and his and their heirs and near relations for ever Provided always that a plan of every monument proposed to be erected and placed shall be exhibited to the said Trustees before such permission as aforesaid is given and that the said Trustees shall be at liberty to withhold such permission and prevent the erection of any monument which shall appear to them inappropriate or unbecoming and shall determine and fix the position of any unobjectionable 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 Provided further that nothing herein contained shall be deemed to prevent the said Trustees from allowing the burial of any poor person in such Cemetery free of any charge whatsoever.

Poor persons to be
buried free of charge.

Monuments &c. may
be removed.

8. And be it enacted That it shall be lawful for the said Trustees to take down and remove any monuments cenotaphs tablets or other erections which shall have 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 shall not have been complied with.

Injuring monuments
&c. a misdemeanor.

9. And be it enacted That if any person or persons shall wantonly or wilfully do or cause to be done any damage to any monument vault tomb-stone building erection railing shrubbery tree or plant in the said Cemetery he shall be guilty of a misdemeanor and being convicted thereof before any two or more Justices of the Peace of the City of Melbourne (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 or persons to whom the burial place may belong) shall be liable for every such offence to a penalty not exceeding twenty pounds or to be committed by such Justices at their discretion to any gaol or house of correction in the said City there to remain for a reasonable time not exceeding three months and any person or persons who shall do or cause to be done any injury to any such monument vault tomb-stone building erection railing shrubbery tree or plant whether the same shall have been done wilfully or wantonly or otherwise howsoever 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 the Supreme Court of the Colony or in the Court of Requests in the City of Melbourne according to the amount of damage sustained either at the suit of the said Trustees or by the person or persons entitled to any vault or monument or other such erection so injured under the provisions of this Act.

Mortuary Church or
Chapel may be
erected.

10. And be it enacted That the said Trustees shall and may allow any body of Christians at their own expense to erect and build within such part of the said Cemetery as shall be specially set apart for that denomination 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 Provided that the plans specifications elevations and models thereof with such lodges and other buildings and conveniences thereto shall be first submitted for the approval of the said Trustees and shall be approved by them.

Plans &c. to be sub-
mitted.

Private vaults pro-
tected.

11. And be it enacted That 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 it shall be lawful for the said Trustees or any officer employed by them to require and they or he shall be entitled to have produced to them or him satisfactory evidence that the person for the time being entitled as owner to the exclusive right of burial or interment in such vault brick

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brick grave or other burial place has consented or would not object to such interment taking place therein.

12. And be it enacted That in all cases in which Justices of the Peace have jurisdiction under the foregoing or other provisions of this law it shall be lawful for any Justice of the Peace before whom complaint on oath shall be made to summon before any two Justices the party complained against and on proof of the service of such summons it shall be lawful and they are hereby empowered to hear and determine in a summary way the matter of such complaint and on proof of such offence to convict the offender and to adjudge him to pay a penalty or commit him to prison although no information in writing shall have been exhibited before such Justices and all such proceedings by summons without information in writing shall be as good valid and effectual to all intents and purposes as if an information in writing had been exhibited provided that in every such summons the general nature of the complaint shall be succinctly stated.

Jurisdiction of offences.

13. And be it enacted That it shall be lawful for any Trustee or any officer or servant of said Trustees and 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 him or her before some Justice of the Peace without any other warrant or authority than this Act and in case such offender refuses to satisfy the said Justice as to his name and residence 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 offender to be detained in custody until brought before two or more Justices to be dealt with in the ordinary course.

Punishment of offenders.

14. And be it enacted That no proceeding in pursuance of this Act shall be quashed for want of form or be removed by *certiorari* or by any other writ or process whatsoever into the Supreme Court or other superior Court.

No certiorari.

15. And be it enacted That the money arising from all penalties or forfeitures imposed by this Act when recovered shall be paid one moiety thereof to Her Majesty Her Heirs and Successors for the public uses of the said Colony and in support of the Government thereof and shall be applied thereto in such manner as may be appointed by any Act of the said Governor in Council and the other moiety to the use of the informer or party prosecuting who shall be entitled to his or her costs and charges over and above such forfeitures or penalties to be ascertained and assessed by the Justices before whom the case is heard Provided that in all proceedings under this Act the person exhibiting the information or complaint shall be deemed and taken to be a competent witness on the hearing or trial thereof Provided further that it shall be lawful for the Governor of the said Colony for the time being to pardon any offender and to remit the whole or any part of such penalty or forfeiture as the justice of each particular case may require.

Appropriation of penalties.

Informer a competent witness.

Governor may pardon offender and remit the whole or part of penalty.

16. And be it enacted That it shall not be lawful for the said Trustees to act unless at a meeting to be convened according to a rule to be adopted by them for such purpose and every such meeting shall be presided over by the senior Trustee present such seniority being determined by the order in which the respective names of such Trustees shall stand in their commission or commissions of appointment and all questions matters and things which shall be discussed or considered at any such meeting shall be decided and determined by the majority in number of the Trustees then present Provided that the said Trustees shall not be competent to proceed to business unless there be

Meetings to be convened by the rules to be established.

Regulations as to proceedings at such meetings.

Melbourne Streets &c.

at least three of them present and that a book be opened and kept in which shall be entered a minute of the proceedings of the Trustees at every such meeting which minute shall be read and confirmed at the next subsequent meeting and shall be signed by the Chairman who shall have presided at the time such proceedings were held.

Accounts to be kept

17. And be it enacted That a book shall be opened and kept by the said Trustees in which shall be entered a full and particular account in writing of all sums of money which shall be received and expended by the said Trustees and an abstract of such account made up from the first day of January to the thirty-first day of December both inclusive in the year next preceding shall be transmitted to the Colonial Secretary for the said Colony for the time being in the month of January in each and every year and shall be by him forthwith inserted and published in the *Port Phillip Government Gazette* and every such account shall be verified by a declaration to be made and subscribed by such Trustees in the form or to the effect required by a certain Act of the said Governor and Council passed in the ninth year of the reign of Her Majesty Queen Victoria intituled "*An Act for the more effectual abolition of Oaths and Affirmations taken and made in various Departments of the Government of New South Wales and to substitute Declarations in lieu thereof and for the suppression of voluntary and extra-judicial Oaths and Affidavits*" and any Justice of the Peace is hereby empowered and required to administer such declaration and if any Trustee or Trustees shall wilfully make a false statement in any such declaration to any material matter in such account he or they shall be deemed guilty of a misdemeanor.

and verified by
declaration.

9 Vic. No. 9.

Superintendent of
Port Phillip may by
Proclamation order
the present burial
ground to be closed
up.

18. And be it enacted That it shall be lawful for the Superintendent or officer administering the Government of Port Phillip for the time being by Proclamation in the *Government Gazette* to order that the burial ground at present used by the inhabitants of the said City of Melbourne or such part or parts thereof as it may be considered advisable or expedient to close shall be henceforth closed and that thereafter no burial or burials shall be allowed to be made in such burial ground or such part or parts thereof as shall be mentioned in the said Proclamation Provided always that nothing in this Act contained shall be construed to extend to any vaults or inclosed portions of land in the said burial ground which at the time of the passing of this Act shall be the private property of any person or persons whomsoever.

Proviso.