



## CHAPTER xiv.

An Act to enable the Torquay Extramural Cemetery Company to enlarge their cemetery to raise additional capital and for other purposes. A.D. 1929.  
[25th April 1929.]

**W**HEREAS the Torquay Extramural Cemetery Company (in this Act called "the Company") were incorporated by the Torquay Extramural Cemetery Act 1852 (in this Act called "the Act of 1852") and were authorised to construct a cemetery near Torquay in the county of Devon and for that purpose to raise a sum of eight thousand pounds by means of shares and to purchase and hold certain lands in the parish and manor, of Saint Mary Church in the said county :

And whereas the Company in pursuance of the said powers have constructed the said cemetery but by reason of the increase of the population in and in the neighbourhood of Torquay and of the exhaustion of the available space for interments in the said cemetery it has become necessary that additional space should be provided for the interment of the dead and it is expedient that the said cemetery should be extended and enlarged and that the Company should be authorised to purchase certain lands adjoining or in the near neighbourhood of the said cemetery and described in the First Schedule to this Act :

And whereas it is expedient that the Company should be empowered to erect and maintain a crematorium for the cremation of human remains :

And whereas by section 25 (Compensation to incumbent of Tormoham and perpetual curate of Upton) of the

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A.D. 1929; — Act of 1852 it is provided that on the burial within the consecrated part of the said cemetery of every person who shall die in the parishes or ecclesiastical districts of Tormoham or Upton the Company shall pay to the incumbent or perpetual curate for the time being of the said parishes or ecclesiastical districts respectively for and in respect of every such person certain sums in the said section mentioned :

And whereas by section 26 (Sums to be paid to incumbents of parishes from which corpses are brought) of the Act of 1852 it is provided that on the burial of every body within the consecrated part of the cemetery the Company shall pay to the incumbent of any other parish or ecclesiastical district from which any such body shall have been removed for interment in the said cemetery certain sums in the said section mentioned :

And whereas at the date of the passing of the Act of 1852 there were in the said parishes or ecclesiastical districts of Tormoham and Upton and also in the other parishes or ecclesiastical districts referred to in the said section 26 churches or churchyards in which interments might lawfully take place but now the churches and churchyards in the said parishes of Tormoham and Upton are wholly and many of such other churches and churchyards (including the churches and churchyards in the other parishes situate within the borough of Torquay as constituted at the passing of this Act) are wholly or partially closed for interments and it is expedient that the provisions hereinafter contained should be made for the cesser of the payment of such fees :

And whereas the Company have raised the sum of six thousand eight hundred and ten pounds out of the said sum of eight thousand pounds by the issue of six hundred and eighty-one shares of ten pounds each which shares have been fully paid up and it is expedient that the Company should be enabled to raise additional capital by means of shares and by borrowing :

And whereas the said cemetery and the additional lands hereinbefore referred to are now wholly situate in the borough of Torquay and it is accordingly expedient that the name of the Company should be changed :

And whereas the purposes of this Act cannot be effected without the authority of Parliament :

May it therefore please Your Majesty that it may be enacted and be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows :—

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1. This Act may be cited as the Torquay Cemetery Act 1929 and this Act and the Act of 1852 may be cited together as the Torquay Cemetery Acts 1852 and 1929 and shall be construed together as one.

Citation  
and con-  
struction.

2. The following Acts so far as the same are applicable for the purposes of this Act and are not inconsistent with the provisions of this Act or the Act of 1852 are (subject to the provisions of the Act of 1852 and this Act) hereby incorporated with this Act (namely):—

Incorporation of  
general  
Acts.

The Cemeteries Clauses Act 1847;

The Companies Clauses Consolidation Act 1845 except the provisions thereof with respect to the conversion of borrowed money into capital;

The Companies Clauses Act 1863 as amended by subsequent Acts;

The Lands Clauses Acts except the provisions thereof with reference to the purchase and taking of lands otherwise than by agreement and except section 127 of the Lands Clauses Consolidation Act 1845 relating to the sale of superfluous lands.

3. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated therewith have the same respective meanings unless there be something in the subject or context repugnant to such construction And in this Act—

Interpreta-  
tion.

“ The Company ” means the Torquay Extramural Cemetery Company ;

“ The Act of 1852 ” means the Torquay Extramural Cemetery Act 1852 ;

“ The undertaking ” means the undertaking of the Company as for the time being authorised ;

“ The borough ” means the borough of Torquay as constituted at the passing of this Act ;

“ Existing ” means existing at the passing of this Act.

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—  
Power to  
purchase  
additional  
lands for  
cemetery.

4. The Company may purchase by agreement all or any part of the lands described in the First Schedule to this Act and subject to the provisions of this Act all the powers and provisions of the Act of 1852 as amended by this Act which relate to the existing cemetery of the Company (except the provisions of sections 18 19 20 and 21 of the said Act and the provisions thereof relating to the acquisition of lands) shall extend and be applicable to the said lands.

As to en-  
closing of  
additional  
lands for  
cemetery.

5. Before any part or parts of the lands described in the First Schedule to this Act are used for the purposes of interments the Company shall enclose the same by walls or other sufficient fences of the height of five feet at least.

As to en-  
largement  
of cemetery.

6.—(1) No part of the enlargement or extension of the cemetery by this Act authorised shall be made within three hundred yards of any existing house of the annual value of fifty pounds or of any garden or pleasure ground occupied therewith except with the consent in writing of the owner lessee and occupier of such house.

(2) Section 10 (Cemetery not to be within a certain distance of houses) of the Cemeteries Clauses Act 1847 shall not apply to the enlargement or extension of the cemetery by this Act authorised but no part of so much of such enlargement or extension as is comprised within the enclosure numbered 346 on the  $\frac{1}{2500}$  Ordnance map (edition of 1901) Devon Sheet cxvi. 9 and known as Long Broomhill and as is within the distance of one hundred yards of any existing dwelling-house shall be used for burials without the consent in writing of the owner lessee and occupier of such dwelling-house.

Power to  
establish  
crema-  
torium.

7.—(1) The Company may set apart a site for and build provide fit up equip and maintain a crematorium proper and sufficient for the cremation of human remains on the following lands (that is to say):—

A rectangular piece of land containing about one-third of an acre belonging to the Company and forming part of the unconsecrated area of the existing cemetery situate adjacent to and on the west side of the existing chapel and running parallel with the existing footpaths.

(2) The Company may erect and build adjoining to or in connection with any crematorium constructed under the powers of this Act a convenient and suitable chapel for

the reception of the dead immediately previous to cremation and for the purpose of performing burial services therein together with such porches gardens colonnades columbaria or niches for the disposal of ashes and other buildings matters and things for such purposes as the Company may think proper.

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(3) (a) No cremation of human remains shall take place in any crematorium of the Company until the plans thereof have been approved by the Minister of Health and the Company shall have certified to the Secretary of State that such crematorium has been completed is built in accordance with such plans and is properly equipped for the purpose of the disposal of human remains by burning.

(b) Every cremation of human remains in any crematorium of the Company shall take place in accordance with the provisions of sections 7 8 and 10 of the Cremation Act 1902 and any regulations made under that Act and those sections shall apply accordingly as though they were included in this Act with the necessary modifications.

(4) The Company may demand and take such reasonable charges or fees for the cremation of any human remains in such crematorium as they think fit and such charges or fees shall be deemed to be a debt due to the Company from the estate of the deceased.

8. From and after the establishment by the Company of a crematorium under the powers of this Act section 59 (Disturbances and nuisances in cemetery) of the Cemeteries Clauses Act 1847 shall be read and construed as if the words "or cremating" were inserted therein after the word "burying."

Amendment  
of section 59  
of Ceme-  
teries  
Clauses Act  
1847.

9.—(1) As from the passing of this Act the following provisions shall (subject to any variation or alteration thereof under subsection (2) of this section) have effect with respect to burials in common graves within the cemetery either as existing or as enlarged under the powers of this Act (namely):—

As to  
burials in  
common  
graves.

(a) The Company shall not cause or permit the body of any person to be buried in any common grave in the cemetery in such a manner that any part of the coffin containing the body shall be at a depth less than three feet (or where the coffin is



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constructed of a perishable material at a depth less than two feet) below the level of the surface of the ground immediately adjoining the grave;

- (b) The Company shall not cause or permit a body to be buried in any common grave in the cemetery in which an interment has already taken place unless the coffin containing the body is effectually separated from any other coffin already placed and remaining in the grave by means of a layer of earth not less than six inches in thickness;
- (c) Where in the cemetery any common grave in which an interment has already taken place is reopened for the purpose of making another interment therein the Company shall not cause or permit any human remains interred therein to be disturbed or any soil therein which is offensive to be removed therefrom;
- (d) In this subsection the expression "grave" means a burial place formed in the ground by excavation and without any internal wall of brickwork or stone work or any other artificial lining and the expression "common grave" means a grave in respect of which no exclusive right of burial has been granted by the Company.

(2) The Minister of Health may at any time and from time to time by order and after giving the Company an opportunity of being heard vary or alter any of the provisions of subsection (1) of this section in such manner as he may think fit and such order shall have effect as if enacted in this Act.

Provisions  
as to fees  
payable to  
incumbents  
by Com-  
pany.

**10.**—(1) From and after the twenty-ninth day of September next after the passing of this Act the fees specified in section 25 (Compensation to incumbent of Tormoham and perpetual curate of Upton) of the Act of 1852 shall be payable by the Company to the incumbents of the ecclesiastical parishes or districts set forth in the Second Schedule to this Act in respect of every person who shall die within the said parishes respectively and shall be buried in the consecrated part of the cemetery (either as existing or as enlarged under the powers of this Act) but the liability of the Company to pay the said fees shall in the case of each of the said parishes continue only during the period of the incumbency of the person

who at the date of the passing of this Act is the incumbent of such parish and upon the expiration of that period all such liability shall cease and determine. A.D. 1929.

(2) All liability of the Company to pay any of the fees specified in section 26 (Sums to be paid to incumbents of parishes from which corpses are brought) of the Act of 1852 shall cease on the twenty-ninth day of September next after the date of the passing of this Act.

11. The Company may subject to the provisions of Part II of the Companies Clauses Act 1863 raise any additional capital not exceeding in the whole seven thousand five hundred pounds nominal capital by the issue at their option of new ordinary shares or stock or new preference shares or stock or wholly or partially by any one or more of those modes respectively but the Company shall not issue any share of less nominal value than ten pounds nor shall any share vest in the person accepting the same unless and until a sum not being less than one-fifth of the amount of such share shall have been paid in respect thereof. Power to raise additional capital.

12. One-fifth of the amount of a share shall be the greatest amount of a call and three months at least shall be the interval between successive calls and three-fifths of the amount of a share shall be the utmost aggregate amount of the calls made in any year upon any share. Calls.

13. Except as by this Act otherwise provided the capital in new shares or stock created by the Company under this Act and the new shares or stock therein and the holders thereof respectively shall be subject and entitled to the same powers provisions liabilities rights privileges and incidents whatsoever in all respects as if that capital were part of the now existing capital of the Company of the same class or description and the new shares or stock were shares or stock in that capital. New shares or stock to be subject to same incidents as other shares.

14. The capital in new shares or stock so created shall form part of the capital of the Company. New shares to form part of capital of Company.

15. Every person who becomes entitled to new shares or stock shall in respect of the same be a holder of shares or stock in the Company and shall be entitled to a dividend with the other holders of shares or stock proportioned to the whole amount from time to time called up and paid on such new shares or to the whole amount of such stock as the case may be. Dividends on new shares.

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Restriction as  
to votes in  
respect of  
preferential  
shares or stock.

Limiting  
dividend on  
preference  
capital.

Borrowing  
powers.

**16.** Except as otherwise expressly provided by the resolution creating the same no person shall be entitled to vote in respect of any new shares or stock to which a preferential dividend shall be assigned.

**17.** The dividend on any preference shares or stock issued under the powers of this Act shall not exceed six pounds in respect of every one hundred pounds of such shares or stock actually paid up.

**18.—(1)** The Company may at any time after the passing of this Act without being required to obtain a certificate of the justice of the peace under the fortieth section of the Companies Clauses Consolidation Act 1845 borrow on mortgage of the undertaking in respect of the capital issued by the Company prior to the passing of this Act any sum or sums not exceeding in the whole the sum of two thousand two hundred and seventy pounds.

(2) The Company may also from time to time in respect of the unissued share capital which they are by the Act of 1852 authorised to raise and of the additional capital by this Act authorised borrow on mortgage of the undertaking any sum or sums not exceeding in the whole one-third of the amount of such capital which at the time of borrowing has been raised by the Company but no part of any such sum or sums shall be borrowed until the Company have proved to a justice of the peace who is to certify under the fortieth section of the Companies Clauses Consolidation Act 1845 (before he so certifies) that shares for the whole of the portion of the capital in respect of which the borrowing powers are to be exercised have been issued and accepted and that one-half of such portion of capital has been paid up and that not less than one-fifth part of the amount of each separate share or such portion of capital has been paid on account thereof before or at the time of the issue or acceptance thereof and that such shares were issued and accepted and to the extent aforesaid paid up bona fide and are held by the persons to whom the same were issued or their executors administrators successors or assigns and also that such persons or their executors administrators successors or assigns are legally liable for the same and upon the production to such justice of the books of the Company and of such other evidence as he shall think sufficient he shall grant



a certificate that the proof aforesaid has been given which certificate shall be sufficient evidence thereof. A.D. 1929. —

**19.** The mortgagees of the Company may enforce payment of arrears of interest or principal or principal and interest due on their mortgages by the appointment of a receiver. In order to authorise the appointment of a receiver in respect of arrears of principal the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than five hundred pounds in the whole. For appointment of receiver.

**20.** The Company may create and issue debenture stock subject to the provisions of Part III of the Companies Clauses Act 1863 but notwithstanding anything therein contained the interest of all debenture stock and of all mortgages at any time after the passing of this Act created and issued or granted by the Company under this or any subsequent Act shall subject to the provisions of any subsequent Act rank *pari passu* (without respect to the dates of the securities or of the Acts of Parliament or resolutions by which the stock and mortgages were authorised) and shall have priority over all principal moneys secured by such mortgages. Notice of the effect of this enactment shall be endorsed on all mortgages and certificates of debenture stock. Debenture stock.

**21.** All moneys raised by the Company on mortgage or debenture stock under the provisions of this Act shall have priority against the Company and the property from time to time forming part of the undertaking over all other claims on account of any debts incurred or engagements entered into by the Company after the passing of this Act. Provided always that this priority shall not affect any claim against the Company or their property in respect of any rentcharge granted or to be granted by them in pursuance of the Lands Clauses Acts or in respect of any rent or sum reserved by or payable under any lease granted or made to or vested in the Company which is entitled to rank in priority to or *pari passu* with the interest on their mortgages or debenture stock. Priority of mortgages and debenture stock over other debts.

**22.** The Company may apply to the purposes of this Act any funds or moneys which they now have or may hereafter have in their hands or any moneys which they have power to raise under the Act of 1852 and which may not be required for the purposes of that Act. Power to apply funds to purposes of Act.

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Application  
of moneys.

**23.** All moneys raised under this Act whether by shares debenture stock or borrowing shall be applied for the purposes of this Act or for the general purposes of the Company to which capital is properly applicable.

Receipt in  
case of  
persons not  
sui juris.

**24.** If any money is payable to a shareholder mortgagee or debenture stock holder being a minor idiot or lunatic the receipt of the guardian or committee of his estate shall be a sufficient discharge to the Company.

Power to sell  
&c. land not  
used for en-  
largement of  
cemetery.

**25.** The Company may sell lease or otherwise dispose of in such manner for such consideration and on such terms and conditions as they think fit and in case of sale either in consideration of a gross sum or sums or of an annual rent or rents or of any payment in any other form the whole or any part of the land described in the First Schedule to this Act which they may not require or which they may from any cause be unable to use for the purposes of the enlargement of their cemetery and which shall not have been consecrated or used for the burial of the dead and may sell or otherwise dispose of any rents reserved on any sale lease or disposition of such land and may make execute and do any deed act or thing proper for effectuating any such sale lease exchange or other disposition :

Provided that nothing in this section contained shall release the Company or any person purchasing or acquiring any lands from them under this section from any covenants restrictions reservations terms or conditions made payable by or contained in any conveyance or other deed or instrument by which any such lands may hereafter be conveyed to or otherwise acquired by the Company or any person from or through whom the Company may hereafter derive title to the same but all such covenants restrictions reservations terms and conditions shall remain and be of as full force and effect and may be exercised enjoyed and enforced in like manner and to the same extent as if this Act had not been passed.

Lands for  
general  
purposes.

**26.** The Company in addition to any other lands which they are by this Act authorised to acquire may from time to time by agreement purchase take on lease acquire and hold for the general purposes of their undertaking any lands not exceeding in the whole five acres Provided that any lands so acquired or held shall not be used for a cemetery burial ground or crematorium nor shall the Company create or permit the creation or continuance of any nuisance on any such lands.

**27.** Notwithstanding anything contained in the Act of 1852 the number of directors shall from and after the first annual general meeting of the Company after the passing of this Act be eight but the Company may at that or any subsequent annual general meeting after due notice for that purpose vary the number of directors but so that the number be not at any time more than eight nor less than five and may also determine the number of directors to go out of office annually the order of rotation in which they shall go out of office and what number shall constitute a quorum at meetings of the directors.

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Number  
rotation and  
quorum of  
directors.

**28.—**(1) The directors of the Company may grant such gratuities pensions or allowances or make such other payments as they may think fit to any employee of the Company or where in their opinion adequate provision is not otherwise made to the widow or family or any dependant of any such employee.

Power to  
grant  
pensions &c.

(2) The directors of the Company may enter into and carry into effect agreements with any insurance company or other association or company for securing to any such employee widow family or dependant as aforesaid such gratuities pensions allowances or payments as are by this section authorised to be granted or made and may for all or any of the purposes of this section apply the revenues of the Company.

(3) In this section the word "employee" includes any officer or servant.

**29.** In addition to the powers which the directors of the Company may exercise under the Companies Clauses Acts 1845 to 1889 they may from time to time determine the remuneration of the secretary of the Company.

Directors  
may deter-  
mine re-  
muneration  
of secretary.

**30.** After the passing of this Act the name of the Company shall be the Torquay Cemetery Company.

Change of  
name.

**31.** The following sections of the Act of 1852 are hereby repealed (that is to say):—

Repeal of  
certain  
sections of  
Act of 1852.

Section 24 (Regulating burials in common graves);

Section 27 (Sum to be paid to parish clerk).

**32.** All costs charges and expenses of and incident to the preparing for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Company.

Costs of  
Act.

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The SCHEDULES referred to in the  
foregoing Act.

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### THE FIRST SCHEDULE.

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#### LANDS IN THE BOROUGH OF TORQUAY IN THE COUNTY OF DEVON TO BE TAKEN UNDER THE POWERS OF THIS ACT.

(a) Certain lands containing 2 acres 2 roods and 15 perches or thereabouts belonging or reputed to belong to Lionel Henry St. Croix Cary bounded on the south and east by the existing cemetery on the north by the public road leading from Hele Cross to Low's or Lowe's Bridge and on the west by land belonging or reputed to belong to Messrs. William Thomas and Company Limited the said lands being the enclosure numbered 348 on the 1/2500 Ordnance map (edition of 1901) Devon sheet No. cxvi. 9 and known as Higher Chedgewell.

(b) Certain other lands belonging or reputed to belong to the said Lionel Henry St. Croix Cary containing 4 acres 2 roods and 11 perches 4 acres 3 roods and 36 perches and 4 acres 1 rood and 27 perches respectively or thereabouts bounded on the south by the said public road from Hele Cross to Low's or Lowe's Bridge on the east by lands belonging or reputed to belong to the Torquay Sanitary Steam Laundry Company Limited and the Torquay Pottery Company Limited on the north-east by lands belonging or reputed to belong to the Torquay and Paignton Gas Company and on the north-west by lands belonging or reputed to belong to the said Lionel Henry St. Croix Cary and on the south-west by lands belonging or reputed to belong to Messrs. William Thomas and Company Limited and others the owners of the dwelling-houses and premises there known as numbers 1 to 6 Broomhill Cottages the said lands being the enclosures numbered 346 345 and 372 on the 1/2500 Ordnance map (edition of 1901) Devon sheets Nos. cxvi. 9 and 10 and known as Long Broomhill Middle Broomhill and Great Broomhill respectively.

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THE SECOND SCHEDULE.

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Ecclesiastical parishes or districts in the borough referred to in the section of this Act of which the marginal note is "Provisions as to fees payable to incumbents by Company."

Tor (otherwise Tormoham).

Upton.

Ellacombe.

Saint Luke.

Saint John.

Torwood.

Ilsham.

Holy Trinity.

Saint Mary Church.

Babbacombe.

Cockington.

Saint James.

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