

CEMETERIES.

THIS Bill consolidates all the existing legislation of the General Assembly respecting cemeteries and burial-grounds contained in eight Acts; and also proposes to repeal all the existing provincial legislation of a general character upon these subjects. The Acts and Ordinances proposed to be repealed are mentioned in the Schedule.

The general scope of the Bill is to provide means for the control of all cemeteries and burial-grounds by Trustees or Managers as at present, including the power to close such cemeteries or burial-grounds, which now subsists. But, in undertaking the consolidation of these measures, we were led to consider the necessity of providing means by which the care and control of cemeteries could be vested in local bodies; and with this object we have prepared a series of clauses, to which attention is specially directed. The local bodies to whom the powers are to be given are the County and Borough Councils and town districts; and, if it were desired to include any other body, a clause could easily be framed allowing it to come under the Act, upon signifying its desire to do so.

All the new matter is indicated in the usual way, and where provisions have been adapted from existing legislation their sources are also indicated. It is proposed to let the Act come into force on the first day of October next.

As already stated, the Bill provides for the general management and control of all cemeteries and burial-grounds. The former of these includes all places of interment open to the public, and the latter means burial-grounds which are usually under the control of some denomination.

The interpretation clause is new, and contains such definitions as are necessary to explain the other clauses.

Clauses 3 to 5 bring every cemetery and burial-ground now or hereafter established under the Act. Provision is also made for continuing the Trustees or other authorities in office, and for saving existing rights and remedies.

Clauses 8 and 9 are new, but seem necessary.

Clauses 13, 14, 16, and 18 are adapted from the Wellington Act of 1854.

Clause 21 does away with the necessity of gazetting regulations as at present.

Clause 22 is the present law, but has been rearranged and enlarged.

Clause 29 is an adaptation from the Canterbury Ordinance quoted in the margin. The appeal allowed by the Ordinance was to the Superintendent, but we suggest it might be given to a Resident Magistrate, and have inserted a provision to this effect.

Clauses 38 to 46 inclusive set out the powers we suggest should be vested in local authorities. We suggest that these clauses will give all necessary powers to local authorities.

Clause 47 is new, and gives to Managers of burial-grounds the like powers as are possessed by Trustees of cemeteries.

Clauses 49 and 50 are new. They prohibit the establishment of cemeteries or burial-grounds in boroughs or town districts.

Clauses 51 to 55 are adaptations from the English Cemeteries Clauses Act of 1847.

Clause 57, as to registration of burials, is taken from the Canterbury Ordinance, quoted in the margin of the Bill.

Clauses 58 and 59 are new, and permit removal of bodies under certain circumstances, with the license of the Colonial Secretary.

Clauses 82 and 83 are adaptations from an Auckland Act of 1874.

Clause 84 is the repealing clause, and a general saving clause has been added.

Clause 85 saves the operation of the Act mentioned, which contains special provision as to the closing of cemeteries.

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CEMETERIES.

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- 51. Cemeteries, &c., to be enclosed. To be kept in repair and good order.
- 52. No burials under or close to chapels.
- 53. Power to make sewers, drains, &c., in and about cemeteries, &c.
- 54. Penalty for allowing water to be fouled, or nuisance in public places.
- 55. Penalty to be sued for within six months.
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- 57. All burials in cemeteries and burial-grounds to be registered.

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- 58. Bodies not to be removed from cemeteries without license of Colonial Secretary.
- 59. Penalty for removing bodies without license.

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- 60. Colonial Secretary may direct inspection of cemeteries, &c.
- 61. Penalties.
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OFFENCES.

- 63. Trustees to prosecute for damage.
- 64. Malicious injury.
- 65. Injuries to monuments, &c.
- 66. Indecency or misbehaviour.
- 67. Trustee may seize and detain any person committing offence against this Act.

<p>68. On refusal to give his name, offender may be kept in custody.</p> <p>69. Penalty for allowing trespass of cattle in cemeteries.</p> <p>70. Penalty in cases not otherwise provided.</p> <p>71. Appropriation of penalties.</p> <p>72. Penalties recoverable summarily.</p> <p style="text-align: center;">CLOSING CEMETERIES OR BURIAL-GROUNDS.</p> <p>73. Governor in Council may close cemeteries or burial-grounds.</p> <p>74. Local bodies to provide new cemeteries outside of towns, &c.</p> <p>75. Order not to apply in respect of certain relations.</p> <p>76. Penalty for burying contrary to the provisions of the Order in Council.</p> <p>77. Relatives of deceased may cause body to be removed under certain conditions.</p>	<p>78. Cemetery closed under this Act to be maintained as a reserve.</p> <p>79. Governor may make rules and regulations for the management, &c., of cemeteries, &c.</p> <p>80. Saving of rights of denominational trustees.</p> <p style="text-align: center;">CREMATION.</p> <p>81. Cremation may be directed under will.</p> <p style="text-align: center;">PRIVATE BURIALS.</p> <p>82. Interments on private lands forbidden where cemeteries, &c., available.</p> <p>83. Exceptional cases. Notice of such interments to be given.</p> <p style="text-align: center;">REPEALS.</p> <p>84. Repeals. Saving past transactions.</p> <p>85. Saving of Canterbury Church property trusts. Schedule.</p>
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A BILL INTITLED

Title. AN ACT to consolidate and amend the Laws relating to Public Cemeteries and other Burial-grounds.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.
Commencement of Act.

1. The Short Title of this Act is "The Cemeteries Act, 1882."
It shall come into operation on the *first* day of *October* next after the passing thereof.

PRELIMINARY.

Interpretation.

2. In this Act, if not inconsistent with the context,—

"Burial-ground" includes every place of burial not being a cemetery as herein defined:

"Cemetery" means any place set apart for the interment of the dead generally, irrespective of denomination or sect:

"Denomination" means and includes any religious denomination or sect, however designated or known:

"Local authority" means and includes the Council of a county constituted under "The Counties Act, 1876," the Council of a borough constituted under "The Municipal Corporations Act, 1876," the Council of any Municipal Corporation constituted under any Act or Ordinance, and also the Town Board of any town district established under "The Town Districts Act, 1881:"

"Local fund" means and includes the county fund of a county, the borough fund of a borough, and the district fund of a town district:

"Managers" means the persons who have the control or management of any burial-ground as herein defined:

"Public notice" means a notice published in one or more newspapers circulating in the place or district to which the act, matter, or thing required to be publicly notified relates or refers, or in which it arises:

"Trustees" means the persons appointed to be the trustees of a cemetery under this Act, and includes a local authority which has the control of any such cemetery:

Application of Act.

Existing cemeteries deemed established under Act.

3. The provisions of this Act shall apply to every cemetery and burial-ground as herein respectively defined now or hereafter to be established.

4. All land which has heretofore been in any manner reserved, appropriated, or set apart for any public cemetery or burial-ground, and which has been or is

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now used for the purpose of the interment of the dead therein, shall be deemed to have been so appropriated or set apart under this Act.

5 5. Every corporate body, and all Trustees, Managers, or other persons having the control or management of any cemetery or burial-ground at the commencement of this Act, under any Act or Ordinance hereby repealed, shall be deemed to have been appointed as Trustees of such cemetery or the Managers of such burial-ground, as the case may be, under this Act.

Existin Trustees,
&c., to continue as
such.

10 But all rights, remedies, and powers existing at the commencement of this Act, or which may afterwards arise upon or in respect of any deed, contract, instrument, matter or thing lawfully made, entered into, or done by such corporate body, Trustees, Managers, or other persons as aforesaid, shall be exercised and enforced by and against, as the case may be, the corporate body, Trustees, Managers, or persons deemed to have been appointed as aforesaid.

AS TO CEMETERIES.

(1.) Trustees.

15 6. The Governor may from time to time appoint and remove so many Trustees, not fewer than three in number, as he may think fit, to have the maintenance and care of any cemetery; and, in case of the death, resignation, or removal of any Trustee, or, in case he shall be absent from the colony for six consecutive months, may appoint another in the place of the Trustee so dying, resigning, or being absent.

Governor may
appoint Trustees
of cemeteries.
1877, No. 46, ss. 2, 4.

Every appointment and removal as aforesaid shall be gazetted.

20 7. Trustees appointed under this Act shall have power to hold any land which may be conveyed to them by grant from the Crown, or by any other sufficient deed of conveyance, or that may be in any manner vested in them in trust for the establishment or purposes of a cemetery.

Power of Trustees to
hold lands.
Ib., s. 3.

New Clauses.

30 8. The legal estate in the land comprised in the cemetery, and all moneys, goods, chattels, and effects whatsoever of or belonging to or connected with such cemetery, shall become vested in the Trustees for the time being immediately upon their appointment.

Lands and property
to vest in Trustees.

A copy of the *Gazette* containing a notification of the appointment of Trustees or a Trustee shall be sufficient evidence thereof.

Gazette evidence of
appointment.

35 9. The Trustees shall not make use of any such land for any purpose except such as is authorized by this Act, or charge or alienate such land, or any part thereof, by mortgage, sale, lease, or otherwise, or dispose of the rents, issues, and profits thereof, except as in this Act is expressly provided.

Restriction on
alienation.

40 10. Upon every new appointment of a Trustee the legal estate in all land held by any vacating Trustee in trust for the purposes aforesaid shall, without any further conveyance, vest in the new Trustee or Trustees, solely or conjointly with the continuing Trustee or Trustees, as the case may require.

Legal estate to vest
in Trustees *ex officio*.
Ib., s. 5.

11. All acts, matters, and things which the Trustees are authorized and required to do by any of the provisions of this Act shall and may be done by any three of such Trustees assembled at a meeting whereof due notice shall have been given or forwarded to all the Trustees.

Quorum of Trustees.
Ib., s. 6.

45 12. The majority in number present at any meeting of Trustees shall decide and determine all questions, matters, and things which may be discussed or considered at such meeting, and in case of equality of votes the Chairman shall have a second or casting vote.

Questions to be
decided by majority.
Ib., s. 7.

Trustees may pay cost of management. Wellington Act, 1854, Sess. I., No. 9, s. 8.

Trustees may borrow money for certain purposes. *Ib.*, s. 10.

Application of moneys received for sites for graves. *Ib.*, s. 17. 1877, No. 46, s. 21.

Cemetery to be open to public for interment. Wellington Act, 1854, Sess. I., No. 9, s. 15. Trustees to keep account and abstract. 1877, No. 46, s. 22.

Liability of Trustees. Wellington Act; 1854, Sess. I., No. 9, s. 21.

Trustees may make by-laws. 1877, No. 46, s. 8.

Trustees to make and publish rules and regulations and scale of fees. *Ib.*, ss. 9, 11.

13. The Trustees, out of any moneys to be received by them under the authority of this Act, may pay the salaries of a clerk, and of all sextons and such other subordinate officers as they may think necessary to appoint from time to time, and also the necessary incidental charges of management of the cemetery. 5

14. The Trustees may, for the purpose of defraying the expenses of the preliminary work of laying out a cemetery in proper order and securing the same, from time to time borrow or take up money by way of loan, at any rate of interest not exceeding *eight* per centum per annum; which loan, together with the interest accruing thereon, shall be a first charge on the funds received by the Trustees under the authority of this Act, after defraying expenses of management. 10

15. All sums received for the purchase of sites of graves, and all fees or sums to be paid upon interments in any part of a cemetery, shall be received by the Trustees of such cemetery, and be applied in the first place to the payment of current necessary expenses and interest on loans, if any, and, subject thereto, and to the paying-off of such loans, shall be applied *to and for the several other purposes and objects authorized by this Act* 15

New Clause.

16. Subject to this Act, and any regulations made thereunder, every cemetery shall be open for the interment of all deceased persons, to be buried with such religious or other ceremony, or without any such ceremony, as the friends of such deceased persons may think proper. 20

17. The Trustees shall keep full accounts of all sums of money received and expended by them, and an abstract of such accounts made up from the day of their first appointment to the thirty-first day of December in the first year, and from the first day of January to the thirty-first day of December, both inclusive, in each subsequent year; and such accounts and abstracts shall be at all reasonable times open to the inspection of any person appointed by the Governor in that behalf. 25

New Clause.

18. The Trustees shall not be answerable or accountable for the other or others of them, but each for his own acts, receipts, neglects, or defaults respectively. 30

And the Trustees, or any of them, shall not be accountable for any banker, broker, or other person with whom, or in whose hands or custody, any part of the moneys of such cemetery may be deposited or lodged for safe custody or otherwise in execution of the trusts reposed in them under this Act, nor for any loss or damage which may happen in the execution of the aforesaid, or in relation thereto, except the same shall happen by or through their own wilful default respectively. 35

19. The Trustees may make by-laws for convening meetings, the appointment of their Chairman, and *for such other purposes* as may be necessary for their guidance and management. 40

20. The Trustees shall have the following powers, duties, and authorities, and make such regulations *as may be necessary and proper for all or any of the purposes hereinafter mentioned*:— 45

- (1.) For the maintenance, preservation, and embellishment of the cemetery;
- (2.) For directing the positions of all graves and vaults in such cemetery, the depths of the graves, and construction of coffins to be admitted

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into vaults, and the covering of vaults so as to prevent the escape of any noxious exhalation or evaporation in the cemetery ;

(3.) For protecting the buildings, monuments, shrubberies, plantations, and enclosures therein and thereof from destruction or damage ; and

5 (4.) May from time to time fix a scale of fees payable on any vault or grave being dug and made, and any monument or tombstone being erected or placed, in any part of the cemetery, and may from time to time revise and alter such scale of fees.

10 A copy of every such scale of fees shall be affixed or posted in some conspicuous part of such cemetery, and shall be at all times continued there, and preserved in a distinctly legible condition.

21. Every by-law or regulation, and every scale of fees made under this Act, shall be publicly notified by the Trustees, and shall have no effect unless and until the same has been publicly notified at least seven days before it comes into operation.

Rules, fees, &c., to be of no effect unless publicly notified. 1877, No. 46, s. 10,

A copy of every such notification shall be transmitted to the Colonial Secretary.

New Clause.

22. The Trustees of any cemetery may, and upon an order signed by a Justice of the Peace shall, permit any poor person, and such persons from hospitals, lunatic asylums, gaols, prisons, and other public institutions, as may be required by the person in charge of any such institution, to be buried in such cemetery free of any charge whatsoever.

Burial of poor persons. Ib., s. 18, enlarged.

And if any such person shall be known or believed to have belonged to any particular religious denomination, he shall be buried in the portion of the cemetery (if any) set apart for such denomination.

Provided that every Justice, before signing any such order, shall satisfy himself that such person has not left sufficient means to pay the charge, or that his relatives and friends are unable to pay the same.

(2.) *Management.*

23. The Trustees may from time to time—

Trustees' powers.

(1.) Enclose the land comprised in a cemetery or any portion thereof with proper and sufficient walls, rails, fences, or palisades, and erect suitable gates and entrances ;

Ib., s. 23.

(2.) Lay out and ornament such cemetery in such manner as may be most convenient and suitable for the burial of the dead, and may embellish the same with such walks, avenues, roads, and shrubs as may to them seem fitting and proper ;

Ib.

(3.) Preserve, maintain, and keep any such cemetery and its walls and fences, and all monuments, tombstones, enclosures, buildings, erections, walks, and shrubberies therein and belonging thereto, in a cleanly and orderly state and condition ;

Ib.

(4.) Make any new roads to the cemetery, or widen or improve any existing roads thereto which they may think fit :

10 and 11 Vict., c. 65, ss. 12, 13.

Provided that they shall not widen or improve any existing street or road without the consent of the owner thereof, if a private road, or, if the street or road be public, without the consent of the persons in whom the management of the road is vested by law ; and

(5.) Enter into such agreements as they think fit with the owners or persons having the management of any such road as aforesaid for

Ib., s. 14.

Trustees may sell exclusive right of burial, &c. 1877, No. 46, s. 12. After burial, places of interment may be purchased. *Ib.*, s. 13.

Private vaults protected. *Ib.*, s. 19.

Powers of Trustees as to vaults and tombstones.

Vaults and monuments. *Ib.*, s. 14.

Plans of vaults, &c., to be submitted to Trustees. *Ib.*, s. 15.

Trustees to fix positions of monuments. *Ib.*, s. 16.

Monuments, &c., to be kept up. *Ib.*, s. 17.

Monuments, &c., removed. *Ib.*, s. 20.

Trustees may set apart portions of cemeteries for different denominations. *Ib.*, s. 32.

effecting the widening or improvement of any such road, and for maintaining the same.

24. The Trustees may sell either in perpetuity or for a limited period the exclusive right of burial in any part of the cemetery, and also the right of constructing any vault or place of burial with the exclusive right of burial therein. 5

25. The relations or friends of persons hereafter interred in any cemetery may at any time within two years from the date of such interment, purchase the exclusive right of burial in perpetuity or for a limited period in the pieces of land in which such interments have taken place.

26. 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 as a family or private burial-place, the Trustees or any officer employed by them may require satisfactory evidence that the person for the time entitled as owner to the exclusive right of burial or interment in such vault, brick grave, or other burial-place, has consented, or would not object to such interment taking place therein. 10 15

27. Subject to the special provision contained in the *thirty-seventh* section of this Act, the following provisions shall be in force relating to the construction of vaults and monuments in any cemetery:—

(1.) The Trustees may, upon payment of the appointed fees, permit any vault or grave to be dug or made, and any monument or tombstone to be erected or placed, in a cemetery as they may think proper. 20

(2.) When any person desires to erect any monument or tombstone in a cemetery, he shall, before such permission as aforesaid is given, submit a plan to the Trustees, of the monument or tombstone proposed to be erected, who shall be at liberty to withhold their permission, and prevent the erection of any monument which shall appear to them inappropriate or unbecoming. 25

(3.) The Trustees shall determine and fix the position of any 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 cemetery in an appropriate manner. 30

(4.) Any person digging and making a vault, grave, or tombstone, or erecting a monument in a cemetery by and with such permission as aforesaid, and upon payment of the fees aforesaid, shall be entitled to have such vault, grave, tombstone, or monument maintained according to the terms of such permission to and for the sole and separate use of such person and his representatives, in perpetuity or for the time limited in such permission. 35

(5.) When any monument, tablet, or other erection has 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 cemetery have not been complied with, the Trustees may take down and remove such monument, tablet, or other erection. 40 45

(3.) *Portions set apart for particular Denominations.*

28. Upon the application of the governing body of any separate denomination, the Trustees may permanently appropriate and set apart a portion of any cemetery to be used for the exclusive interment of the bodies of members of such denomination. 50

- “Governing body of a denomination” means the recognized senior office-bearer thereof respectively in any diocese or district; or, in the absence of the aforesaid person, or there being no such person, any two persons of the same denomination or sect holding therein any of the offices of minister or deacon, churchwarden, church manager, trustee, or other equally responsible office. 1877, No. 46, s. 44.
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29. If the Trustees shall be of opinion that the members of any such denomination are inconsiderable in number, the said Trustees may refuse such application as aforesaid; and the governing body so applying may thereupon appeal to the *Resident Magistrate having jurisdiction at the place where such cemetery is situated* against the decision of the said Trustees, and *such Resident Magistrate* shall consider the appeal, and make such order thereupon as shall seem to meet the justice of the case. Appeal in case of refusal of Trustees to do so. Canterbury Act, 1870, Sess. XXXIII., No. 4, s. 9.
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30. The Trustees shall define by suitable marks, not being a dividing fence, the portion of any cemetery set aside for any particular denomination, which may be enclosed, at the expense of the denomination or sect for whom the same is appropriated, with any suitable open fence of a character that will not destroy the general appearance of the whole cemetery. Portions may be divided off by marks, &c. 1877, No. 46, s. 32.
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31. The Trustees shall permit such portion so set aside to be consecrated according to the rites of the particular denomination, and the part which is so consecrated shall be used only for burials according to the rites of the particular denomination. Separate portions may be consecrated. Ib.
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32. Where the members of any denomination desire, at their own expense, to build in a cemetery 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, the Trustees shall permit the same to be built within such part of the cemetery as shall be specially set apart for that denomination. Mortuary chapels. Ib., s. 33.
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33. The Trustees shall not, by any regulation, or any act, matter, or thing, at any time interfere directly or indirectly with— Trustees not to interfere with religious ceremonies, &c. Ib., s. 34.
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- (1.) The performance of any religious ceremony in the burial of the dead according to the usage of the denomination to which the deceased may have belonged; or
- (2.) With any headstones or monuments and inscriptions thereon erected in any part of a cemetery set apart for the use of any particular denomination; or
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- (3.) With the distribution of the land comprised in a cemetery at any time reserved or set apart by the Governor between any denominations under any law or authority, or that may have been made by any grant, conveyance, or other deed, granted or conveyed to and amongst separate and distinct denominations.
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34. The minister of any denomination for which any portion of a cemetery shall be specially set apart may have free access and admission to such portion of the said cemetery at all times as he shall think fit, and may freely exercise his spiritual functions therein without any hindrance or disturbance of the Trustees or any person whomsoever. Ministers of religion to have free access. Ib., s. 35.
- 45
35. Every denomination shall have the direction of the order and course in which the ground appropriated to its exclusive use shall be opened and used for the purpose of interment, and the times at which interments therein may take place, and as to the setting-up of headstones and monuments, with the inscriptions thereon, and the removal of such headstones or monuments. Denominations to have direction of burials in their own portions of cemetery. Ib., s. 36.
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36. Every denomination may appoint and remove, from time to time, fit and proper persons to be denominational guardians of the portion of a cemetery Denominations may appoint guardians of their own portions. Ib., s. 37.

appropriated to the exclusive use of such denomination; and the said guardians shall, in respect of the portion of the cemetery appropriated to the particular denomination, have all the control and management thereof, subject however to the powers granted by this Act to the Trustees.

Powers of denominational guardians as to vaults and tombstones.
1877, No. 46, s. 31, modified.

37. The powers and authorities granted to Trustees of a cemetery by the *twenty-seventh* section of this Act shall, within any portion of such cemetery which has been set apart for any denomination, be exercised exclusively by the denominational guardians of such portion of the cemetery, and the Trustees aforesaid shall have no right or authority to interfere with such guardians in the exercise of such powers: Provided that all fees payable in respect of anything mentioned in the aforesaid section shall be paid to the Trustees aforesaid.

New Clauses.

POWERS OF LOCAL BODIES.

(1.) *Duty to provide Cemeteries.*

Local bodies to provide public cemeteries.

38. It shall be the duty of every local authority to provide a suitable cemetery for the interment of the dead where sufficient provision is not otherwise made for that purpose, or where under the powers contained in this Act such cemetery shall have been closed.

May appropriate local fund for the purpose.

39. Any local authority may appropriate and expend out of the local fund such moneys as it may from time to time think necessary in the purchase or acquisition of land suitable for a cemetery, with the requisite approaches thereto, and in the establishment and maintenance of such cemetery.

Such land may be purchased, taken, or acquired in any convenient place beyond the limits over which such local authority has jurisdiction; and all expenditure incurred for the purposes aforesaid shall be allowed in the audit of the accounts of such body.

Land may be acquired as for a public work.

40. The acquisition of land by a local authority for a cemetery, and for sufficiency of approach thereto, or the widening of existing approaches, shall be deemed to be a public work within the meaning of "*The Public Works Act, 1882.*"

All powers which a local authority has by virtue of this or any other Act for taking, purchasing, or acquiring lands for public works, shall be applicable to the taking, purchasing, or acquiring of land for a cemetery.

Dedication of land for public cemetery by a local authority.

41. Where any local authority shall have acquired, by grant, gift, purchase, or otherwise in any manner, or shall have vested in it, any land for the purposes of a cemetery, and which may be lawfully used for such purposes, they may, by public notice to be made at least once in each of three consecutive weeks, declare the same to be dedicated and open as a cemetery; and thereafter the said land shall be used for such cemetery purposes only.

Local authority to have control of cemetery.

42. In any case as in the last foregoing section mentioned, the local authority dedicating any land for a cemetery shall be the Trustees of such cemetery without further appointment, and, subject as in this Act provided, shall in respect of such cemetery have all the powers granted to Trustees of cemeteries.

Local bodies may jointly establish cemeteries.

43. Two or more local authorities may agree in providing one cemetery for common use in such manner not inconsistent with this Act as they shall think fit; and may agree as to the proportions in which the cost of purchasing, acquiring, or maintaining such cemetery shall be borne between and amongst the bodies represented by such local authorities respectively.

They may also agree which of them shall have the management and control of such cemetery in accordance with and subject to the provisions of this Act;

and, if they do not so agree, the Governor, on application to him for that purpose, may declare which of such authorities shall have such control and management.

5 44. Instead of entering into any such agreement as aforesaid, any local authority may appropriate out of its local fund and pay over to any other local authority such sum as it thinks fit to be expended in the purchase of a cemetery. May contribute towards a cemetery.

Every agreement made under these provisions shall be deemed within the powers and authorities of each local authority, shall be made and executed in the manner required by law, and shall be binding on the respective bodies represented by each such authority.

10 (2.) *May be Trustees.*

45. The Governor also may from time to time appoint any local authority by the aggregate name of such authority, and without naming the individual members thereof, to be the Trustees of any cemetery, and to have the control and management thereof; and may remove any such local authority from such control and management whenever it shall be deemed expedient so to do. Local bodies may be appointed Trustees.

15 46. Whenever any local authority shall have been appointed to be Trustees of a cemetery, or shall be such Trustees by operation of this Act, the following provisions shall have effect:— Their functions and powers in such cases.

20 (1.) If the cemetery has been purchased or is otherwise acquired by the local authority, the property therein, and in all buildings and fences thereon, and in all moneys derived from such cemetery, shall vest in and be the property of the corporate body which such local authority represents.

25 (2.) The persons constituting such local authority for the time being shall be the Trustees of the cemetery without any further appointment.

(3.) All regulations to be made under this Act shall be made by by-laws in like manner and shall have the same effect as other by-laws made by such local authority.

30 (4.) All moneys borrowed by a local authority for the purchase or acquisition of land for a cemetery, or the maintenance thereof, and the approaches thereto, shall be borrowed and raised in like manner and under and subject to all such regulations, terms, and conditions as other moneys may be borrowed by the corporate body which such local authority represents.

35 (5.) And generally all powers, duties, and authorities which a local authority is authorized to do under this Act shall be done in like manner and with the same requisites and authorities as acts or things within the ordinary jurisdiction or powers of such local authority.

40 (6.) Provided that all moneys received by a local authority under this Act shall be paid to a separate account in the local fund, and shall be applied in the first place in the payment of all necessary expenses for the improvement and management of the cemetery; and all accounts shall be otherwise kept in like manner as the ordinary accounts of such local authority are kept.

45 AS TO BURIAL-GROUNDS.

50 47. The Managers of burial-grounds which are not cemeteries shall have all the rights, powers, and duties by this Act granted to or imposed upon Trustees of cemeteries, and the provisions of this Act relating to cemeteries shall, so far as applicable, *mutatis mutandis*, apply in respect of such Managers and burial-grounds. Managers of burial-grounds to have powers of Trustees of cemeteries.

Dedication of land for a burial-ground by a separate denomination.

1877, No. 46, s. 43, amended.

48. Where the members, or any section not less than twenty-five in number of the adult members, of any separate religious denomination shall desire that any land which they may have respectively acquired, by purchase or otherwise, should be set apart as a burial-ground, to be used for the exclusive interment of those members of such denomination for or by whom such land was acquired as aforesaid, they may, with the sanction of the Colonial Secretary, by public notification to be made at least once in each of three consecutive weeks, declare the same to be dedicated and open as a burial-ground, to be used exclusively as aforesaid; and thereafter the said land shall be used for such burial-ground purposes only. 5

Provided always that the Colonial Secretary may refuse to grant his sanction if he shall think such land not fitted for a burial-ground by reason of locality or other sufficient cause. 10

New Clauses.

AS TO UNUSED CEMETERIES, ETC.

Amended.
No cemeteries, &c., to be established within towns.

Unused cemetery reserves discharged from reservation.

49. After the commencement of this Act no cemetery or burial-ground of any kind shall be established within the limits of any borough or town district. 15

50. All Crown lands within any borough or town district which have been reserved as sites for cemeteries or burial-grounds, and which have not been used for such purposes, are hereby discharged from such reservation, and may at any time be appropriated for such other purposes as may be permitted by any Act for the time being in force relating to the administration of public reserves. 20

AS TO CEMETERIES AND BURIAL-GROUNDS GENERALLY.

(1.) Prevention of Nuisances.

New Clauses.

Cemeteries, &c., to be enclosed.
To be kept in repair and good order.
10 and 11 Vict., c. 65, s.s. 15, 16.

No burials under or close to chapels.
Ib., s. 39.
Power to make sewers, drains, &c., in and about cemeteries, &c.
Ib., s. 18.

51. Every part of a cemetery and burial-ground shall be enclosed by walls or other sufficient fences. 25

The Trustees or Managers having charge of any cemetery or burial-ground respectively shall keep the same and the buildings and fences thereof in good repair and condition out of the moneys received by them by virtue of this Act.

52. No body shall be buried in any vault under any chapel in any cemetery or burial-ground, or within fifteen feet of the outer wall of any such chapel. 30

53. The Trustees and the Managers respectively having charge of any cemetery or burial-ground shall make all necessary and proper sewers in and about the cemetery or burial-ground under their respective control for draining and keeping the same 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 such sewer, and 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. 35 40

54. If the Trustees of any cemetery, or the Managers of any burial-ground, cause or suffer to be brought or to flow into any river, stream, reservoir, aqueduct, lake, pond, or watering-place, or into or upon any public highway or public place, any offensive matter from the cemetery or burial-ground, whereby the water therein shall be fouled, or whereby any nuisance shall be occasioned upon 45

Penalty for allowing water to be fouled, or nuisance in public places.
Ib., s. 20.

or in such public highway or place, they shall for every such offence be liable to a penalty not exceeding fifty pounds.

5 55. 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, or frequenting such public highway or public place: 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.

Penalty to be sued for within six months. 10 and 11 Vict., c. 65, s. 21.

10 56. Nothing in this Act contained shall take away from or deprive any person of the right to proceed by way of indictment for a nuisance, or to take any other legal proceedings he may think fit.

Legal rights not barred. 1874, No. 58, s. 9.

(2.) Registration of Burials.

15 57. All burials within any cemetery or burial-ground shall be registered in a book or register to be provided and kept for that purpose by the Trustees or Managers of such cemetery or burial-ground respectively, and in such register shall be distinguished in what parts of the cemetery or burial-ground the several bodies are buried, and a proper description of every grave shall be given, so that the situation thereof can be ascertained; and such register shall be indexed so as to facilitate searches for entries therein.

All burials in cemeteries and burial-grounds to be registered.

Canterbury Ordinance, 1870, Session XXXIII., No. 4, s. 5, extended.

20 Every register shall be open for inspection at all reasonable hours in the day-time upon payment of a fee of one shilling for every such inspection.

(3.) Disinterments.

25 58. It shall not be lawful to remove from its burial-place any body, or the remains of any body, which may have been interred in any cemetery, burial-ground, or other place of burial, without license under the hand of the Colonial Secretary, and with such precautions as he may prescribe as the condition of such license.

Bodies not to be removed from cemeteries without license of Colonial Secretary. 1874, No. 58, s. 4. 20 and 21 Vict., c. 81, s. 25.

30 59. Any person who shall remove any such body or remains, contrary to the last foregoing enactment, or who shall neglect to observe the precautions prescribed as the condition of the license for removal, shall, on complaint made by the Trustees, Managers, or persons having the control of such cemetery or burial-ground, or by any officer or servant employed by them in the said cemetery or burial-ground, or by any person to whom the burial-place may belong, be liable for every such offence to a penalty not exceeding fifty pounds, or, at the discretion of the convicting Justices, to imprisonment for any term not exceeding
35 three months.

Penalty for removing bodies without license. Ibid.

(4.) Inspection of Cemeteries.

40 60. The Colonial Secretary may, from time to time, appoint and authorize any person to inspect any cemetery, or any portion thereof exclusively appropriated to any denomination, or any burial-ground, and ascertain the state and condition thereof, and examine the accounts of receipts and expenditure in relation thereto, and, where regulations in relation thereto have been made under this Act, to ascertain whether such regulations have been observed and complied with.

Colonial Secretary may direct inspection of cemeteries, &c. 1877, No. 46, s. 38, amended.

45 61. If any Trustee, Manager, guardian, or other person having the care of or employed in any such cemetery or burial-ground subject to such regulations as aforesaid shall violate, or neglect or fail to conform to or obey or to enforce, any such regulations, he shall, on conviction before any two Justices, forfeit and pay a sum not exceeding ten pounds.

Penalties. Ibid.

Inspector may order repairs to be made or recommend cemetery to be closed. 1877, No. 46, s. 38.

62. If any person appointed as aforesaid shall find any cemetery or burial-ground, or any part thereof, or the fences thereof, in a state of neglect or want of repair, he may cause all necessary repairs to be forthwith done, and the costs and expenses thereof may be recovered in a summary way from the Trustees or Managers of such cemetery or burial-ground; or else he may report the case to the Governor, who thereupon may order any such cemetery or burial-ground to be closed, or take such steps upon any such report as he may think necessary in order to prevent desecration.

5

OFFENCES.

Trustees to prosecute for damage. *Ib.*, s. 24.

63. The Trustees of any cemetery or the Managers of any burial-ground shall have power to prosecute all persons who may at any time do, or cause to be done, any damage to any building, monument, tombstone, shrubbery, plantation, or enclosures of the cemetery or burial-ground; or who shall be guilty of any indecency or misbehaviour therein; or who shall offend in any way against the provisions of this Act.

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Malicious injury. *Ib.*, s. 25.

64. Every person who—

- (1.) Wantonly or wilfully destroys, or does or causes to be done any damage to, any monument, vault, tombstone, building, erection, railing, fence, shrubbery, tree, or plant in any cemetery or burial-ground, or to any wall or fence thereof; or,
- (2.) Wilfully and unlawfully disturbs any persons assembled in any cemetery or burial-ground for the purpose of burying any body therein,

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shall, upon being convicted thereof, be liable for every such offence to a penalty not exceeding *twenty* pounds, or, at the discretion of the convicting Justices, to imprisonment for any period not exceeding *three* months.

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Injuries to monuments, &c. *Ib.*, s. 26.

65. Every person who does, or causes to be done, any injury to any monument, vault, tombstone, building, erection, railing, shrubbery, tree or plant, or wall or fence, of or in any cemetery or burial-ground, whether the same be 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 any Court of competent jurisdiction by the Trustees of the cemetery or burial-ground, or any person injured by such damage.

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Indecency or misbehaviour. *Ib.*, s. 27.

66. Every person who is guilty of any indecent conduct or language within any cemetery or burial-ground, or commits any nuisance therein, or plays at any game or sport, or discharges firearms, save at a military funeral, therein, or daubs or disfigures any wall or fence in or around any cemetery or burial-ground, or puts up any bill on any such wall or fence, shall be liable to a penalty for every such offence not exceeding *ten* pounds.

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Trustee may seize and detain any person committing offence against this Act. *Ib.*, s. 28.

67. Any Trustee or Manager, or any officer or servant of the Trustees or Managers, of any cemetery or burial-ground, and all such persons as he shall call to his assistance, may seize and detain any person who commits or is in the act of committing an offence against this Act, and whose name and place of abode is unknown to such Trustee, Manager, officer, or servant, and may convey such person before some Justice without other warrant or authority than this Act.

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On refusal to give his name, offender may be kept in custody *Ibid.*

68. In case such person refuse to satisfy the Justice as to his name and place of abode, 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 person to be detained in custody until he shall be brought before two or more Justices to be dealt with in the ordinary course.

50

69. The owners of any neat cattle, horses, swine, or goats which shall be found trespassing in any cemetery or burial-ground, shall for every such offence be liable to a penalty of not less than *one* pound nor more than *five* pounds in respect of every head of neat cattle, horses, swine, or goats so found trespassing, without proof of special damage, and notwithstanding that actual damage cannot be shown or proved.

Penalty for allowing trespass of cattle in cemeteries.
Taranaki Ordinance, 1864, Sess. XII., No. 6, s. 2.

New Clause.

70. Every person who offends against any of the provisions of this Act shall, where no other penalty is provided, be liable for any such offence to a penalty not exceeding *ten* pounds.

Penalty in cases not otherwise provided.

71. One moiety of the money arising from any penalty or forfeiture imposed by this Act, when recovered, shall be paid to the Trustees of the cemetery or Managers of the burial-ground in respect whereof such penalty or forfeiture may have been imposed, for the uses of such cemetery or burial-ground, and the other moiety to the use of the informer or person prosecuting.

Appropriation of penalties.
1877, No. 46, s. 29.

72. All moneys, fees, and penalties recoverable under this Act, or any regulation made in pursuance thereof, may be recovered in a summary manner as provided by "The Justices of the Peace Act, 1882"; and any proceeding which shall be had and taken in a summary way in pursuance of this Act shall not be removed by *certiorari* or other process into the Supreme Court or other Court.

Penalties recoverable summarily.
Ib., s. 30.

CLOSING CEMETERIES OR BURIAL-GROUNDS.

73. The Governor, by Order in Council, to be gazetted, may, when it shall appear to him that burials in any cemetery or burial-ground whatsoever should be wholly discontinued, or should be discontinued subject to any exception or qualification, direct that, after a time to be mentioned in such order, not being less than six months from the date thereof, burials in such cemetery or burial-ground shall be discontinued, and may from time to time postpone the time mentioned in such order for the discontinuance of burials, or otherwise vary any such order, whether the time appointed for the discontinuance of burials thereunder or other operation of such order shall or shall not have arrived.

Governor in Council may close cemeteries or burial-grounds.
1874, No. 58, s. 2.

74. No such order shall be made until the *local authority of the district* in which the said cemetery or burial-ground is shall have provided a sufficient cemetery not within the limits of any *borough* or *town district*, and shall have prepared the same for the interment of the dead therein.

Local bodies to provide new cemeteries outside of towns, &c.
Ibid.

75. Notwithstanding any Order in Council made as aforesaid, where any person has been buried in a cemetery or burial-ground previously to the closing thereof, any survivor of such person being within the degrees of relationship of husband, wife, parent, child, brother, or sister to the deceased may be buried in the same grave with the said deceased.

Order not to apply in respect of certain relations.
Ibid.

76. If any person, after the time mentioned in any such order, shall bury any body, or shall in anywise act or assist in or shall suffer or permit the burial of any body in any cemetery or burial-ground, as the case may be, in which burials have, by any such order, been ordered to be discontinued, such body not being that of a person within the degrees of relationship hereinbefore excepted, he shall, upon conviction before any two Justices, be liable to a penalty not exceeding *one hundred* pounds.

Penalty for burying contrary to the provisions of the Order in Council.
Ib., s. 3.

77. The relatives of any deceased person, with the consent in writing of the Colonial Secretary, may cause the body of such deceased person to be

Relatives of deceased may cause body to be

removed under certain conditions.
1874, No. 58, s. 4.

Cemetery closed under this Act to be maintained as a reserve.

Ib., s. 2.

Governor may make rules and regulations for the management, &c., of cemeteries, &c.
Ib., s. 5.

Saving of rights of denominational trustees.
Ib., s. 12.

Crementation may be directed under will.
Ib., s. 14.

Interments on private lands forbidden where cemeteries, &c., available.

Auckland Act, 1874, Sess. XXIX., No. 18, ss. 2, 3.

Exceptional cases. Notice of such interments to be given.
Ib., ss. 4, 5.

removed from any cemetery or burial-ground within which burials are prohibited, and to be interred in any cemetery or burial-ground within which burials are not for the time being prohibited.

78. Every cemetery or burial-ground closed by Order in Council shall, from and after the date of such order, be maintained in good order by the Trustees or other persons or body in whom or in which the same is vested, as a public reserve, open to the public under such regulations as may from time to time be made under the powers hereinbefore contained, and such reserve shall not be sold or leased, nor diverted to any other purpose. 5

79. The Governor, by public notification, may from time to time make such regulations in relation to all or any cemeteries or burial-grounds, not inconsistent with this Act, as to him may seem proper for the protection of the public health and the maintenance of public decency, and for the regulation and conduct of persons using or frequenting any cemetery or burial-ground closed by Order in Council, and may impose such fine, not exceeding five pounds, to be recovered before any two or more Justices of the Peace in a summary manner, for the breach of any such regulation. 15

The Trustees, Managers, and all persons having the care of or employed in such cemeteries and burial-grounds respectively shall conform to and obey and enforce such regulations. 20

80. Nothing in this Act contained in relation to the closing of cemeteries or burial-grounds shall be construed to divest, alter, or affect the right, title, or interest of any trustees of any denomination, or any person or persons, in or to any places in the existing cemeteries or burial-grounds, or in or to any vault, monument, headstone, mortuary chapel, or any other place, matter, or thing therein, with free right of ingress and egress as they respectively now have in, from, and through the same, or to affect such right of control and management of the site of such burying-places as they now have therein, save as to future interments. 25

CREMATION.

81. Any person, by will or deed duly executed, may direct that his or her body shall after death be disposed of by burning the same to ashes, instead of by burial in the earth; and the executor or executors of such person may carry into effect such direction. 30

Provided that such burning shall be conducted in a manner which shall not create any public or private nuisance. 35

PRIVATE BURIALS.

82. It shall not be lawful to inter any body upon any land whatsoever not being a cemetery or burial-ground if there shall be any such cemetery or burial-ground within five miles of the place where the death shall have taken place, or of the place whence such body shall be taken for the purpose of being interred. 40

Every person who shall offend against the provisions of this section shall be liable to a penalty not exceeding fifty pounds.

83. Wherever there shall not be a cemetery or burial-ground within the distance mentioned in the last foregoing section, then and in such case bodies may be interred upon land not being a cemetery or burial-ground; but notice of every such interment, specifying the name of the person interred, if known, the supposed cause of death, and the place of interment, shall be given by the person interring such body to the nearest Resident Magistrate or Justice of the Peace within three days after such interment shall have taken place. 50

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Every person who shall offend against the provisions of this section shall be liable to a penalty not exceeding *fifty* pounds.

REPEALS AND SAVING.

- 5 **84.** The several Acts and Provincial Ordinances enumerated in the Schedule hereto are hereby repealed. Repeals.
- (1.) But this repeal shall not affect any grant, conveyance, or deed or instrument of dedication of any land, or any title to any land, or any mortgage or other security given, or any debt or liability incurred and still subsisting; Saving past transactions.
- 10 (2.) And all appointments, regulations, and fees made and subsisting at the commencement of this Act shall continue in force until the same shall be altered under the provisions of this Act; 1877, No. 46, s. 11.
- (3.) And all fees and sums of money due and penalties incurred, and all matters or things commenced or in progress, under any Act or Provincial Ordinance repealed by this Act may respectively be prosecuted and recovered or completed and perfected thereunder, notwithstanding the repeal thereof; and such repeal shall not affect anything lawfully done or suffered. Ibid.
- 15 **85.** Nothing in this Act shall be deemed to affect or interfere with the provisions of "The Church Property Trust (Canterbury) Act, 1879," except so far as may be necessary to give effect to that Act. Saving of Canterbury Church property trusts.
- 20

SCHEDULE.

Schedule.

ACTS AND ORDINANCES REPEALED.

(1.) *Acts of the General Assembly.*

- 1871, No. 27.—The Auckland Burial-Ground Act, 1871.
 1872, Private, No. 3.—The North Dunedin Cemetery Act, 1872.
 1874, No. 58.—The Burial-Ground Closing Act, 1874.
 1877, No. 46.—The Cemeteries Management Act, 1877.
 1877, Local, No. 28.—The Kaiapoi Cemetery Act, 1877.
 1878, Local, No. 3.—The Catlin's River Cemetery Act, 1878.
 1878, Local, No. 14.—The Wyndham Cemetery Act, 1878.
 1881, Local, No. 4.—The Port Chalmers Cemetery Act, 1881.

(2.) *Act of the Province of Auckland.*

- 1874, Sess. 29, No. 18.—The Private Burials Prevention and Regulation Act, 1874.

(3.) *Ordinances of the Province of Taranaki.*

- 1861, Sess. 10, No. 7.—The Public Cemetery Ordinance, 1861.
 1864, Sess. 12, No. 5.—The Burial-Grounds Protection Ordinance, 1864.

(6.) *Act of the Province of Hawke's Bay.*

- 1867, Sess. 12, No. 4.—The Hawke's Bay Cemetery Act, 1867.

(7.) *Acts of the Province of Wellington.*

- 1854, Sess. 1, No. 9.—An Act to provide for the Management of the Public Cemetery of the Town of Wellington.

- 1855, Sess. 2, No. 5.—An Act to prohibit Burials in the Town of Wanganui and other Places within the Province.
- 1857, Sess. 4, No. 12.—An Act to provide a Public Cemetery in the Hutt District, and for the Management thereof.
- 1862, Sess. 9, No. 4.—An Act to provide for the Management of the General Cemetery at Wanganui.
- 1863, Sess. 10, No. 2.—An Act to provide for the Management of Public Cemeteries.
- 1871, Sess. 21, No. 9.—An Act to prohibit Burials in a certain Block of Land in the Township of Foxton.

(8.) *Act of the Province of Nelson.*

- 1859, Sess. 6, No. 7.—The Public Cemeteries Act, 1859.

(9.) *Acts of the Province of Marlborough.*

- 1868, Sess. 18, No. 3.—The Public Cemeteries Act, 1868.
- 1873, Sess. 25, No. 1.—The Public Cemeteries Act, 1873.
- 1875, Sess. 27, No. 1.—The Public Cemeteries Acts Amendment Act, 1875.

(10.) *Ordinance of the Province of Canterbury.*

- 1870, Sess. 33, No. 4.—The Cemetery Reserves Management Ordinance, 1870.

(11.) *Ordinances of the Province of Otago.*

- 1856, Sess. 5, No. 15.—The Cemeteries Ordinance, 1856.
- 1857, Sess. 6, No. 26.—The Church of England Cemetery Ordinance, 1857.
- 1864, Sess. 18, No. 145.—The Cemetery Reserves Ordinance, 1864.
- 1864, Sess. 18, No. 146.—The Cemetery Reserves Management Ordinance, 1864.
- 1865, Sess. 20, No. 202.—The Cemeteries Ordinance, 1865.
- 1866, Sess. 22, No. 241.—The Cemetery Ordinances Amendment Ordinance, 1866.
- 1870, Sess. 27, No. 312.—The Cemeteries Management Ordinance, 1870.
- 1872, Sess. 30, No. 379.—The Cemeteries Ordinance (Southland) Repeal Ordinance, 1872.
- 1875, Sess. 34, No. 484.—The Cemetery Reserves Management Ordinance 1864 Amendment Ordinance, 1875.

(12.) *Ordinance of the Province of Southland.*

- 1864, Sess. 7, No. 58.—The Church of England Cemetery Ordinance, 1864.