CHAPTER xiv.

An Act to empower the Chester Cemetery Company to enlarge their Cemetery, and to confer further Powers upon them in relation to their undertaking; and for other purposes. [23d May 1879.]

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WHEREAS by the Chester Cemetery Act, 1848, (herein-after called the recited Act,) a company was incorporated under the name of the Chester Cemetery Company (in this Act called the Company), with power to purchase and hold lands, and, on the lands therein more particularly mentioned or referred to, to make and maintain a cemetery or burial ground, and for the purposes of their undertaking to raise five thousand pounds by shares and one third of that sum by borrowing: 11 & 12 Vict. c. c.

And whereas the Company have constructed a cemetery in pursuance of the recited Act, but the progressive increase of the population in the Company's district has made it necessary that the same should be enlarged, and that the Company should be empowered, for the purposes of such enlargement, to purchase and hold the lands and buildings in this Act mentioned and described:

And whereas plans showing the lands which may be taken under the authority of this Act, and a book of reference containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers of those lands, were duly deposited with the clerk of the peace for the county of the city of Chester, which plans and book of reference are herein-after respectively referred to as the deposited plans and book of reference:

And whereas the Company, out of the funds available for dividend, have from time to time set apart by way of reserve fund a sum amounting, at the seventh day of March one thousand eight hundred and seventy-nine, to four thousand and forty-nine pounds three shillings and fourpence:

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And whereas the sum so set apart, if added to the dividends actually paid, would not have paid dividends amounting to seven pounds ten shillings per centum per annum upon the Company's capital from the time of the opening of the said cemetery:

And whereas it is expedient that the Company should be authorised to provide for the application of such reserve fund and to raise additional capital as herein-after provided:

And whereas the purposes aforesaid 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 Queen'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; that is to say,

Short title.

1. This Act may be cited as the Chester Cemetery (Extension) Act, 1879.

Incorporation of general Acts.
8 & 9 Vict. c. 18.
23 & 24 Vict. c. 106.
32 & 33 Vict. c. 18.
10 & 11 Vict. c. 65.

2. The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, and the Cemeteries Clauses Act, 1847, are (except where expressly varied by this Act) incorporated with and form part of this Act.

Interpretation of terms.

3. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partly incorporated herewith have the same respective meanings, unless there be something in the subject or context repugnant to such construction; and the expression "the promoters of the undertaking" means the Company; and for the purposes of this Act the expression "superior courts" or "court of competent jurisdiction," or any other like expression in this Act or any Act incorporated herewith, shall be read and have effect as if the debt or demand with respect to which the expression is used were a simple contract debt, and not a debt or demand created by statute.

Power to purchase additional lands for cemetery.

4. Subject to the provisions of this Act, the Company may enter upon, purchase, and take all or any part of the lands and property shown on the deposited plans and described in the deposited book of reference and in the schedule to this Act, and upon the said lands the Company may enlarge their cemetery within the limits set forth in such schedule.

For protection of the Dee Bridges Commissioners.

5. The following provisions shall have effect for the protection and benefit of the Dee Bridges Commissioners (herein-after referred to as the Commissioners); that is to say,

1. No grave shall be dug or burials made in any land purchased or taken from the Commissioners so as to injure or endanger the embankment or road of the Commissioners:

2. The Company shall pay to the Commissioners all damages, costs, charges, and expenses incurred or sustained by the Commissioners by reason of any injury to their embankment and road caused by the digging of graves, burial of dead, or otherwise in the execution of the powers of this Act in the lands which may be purchased or taken from the Commissioners:

3. The purchase money or compensation payable to the Commissioners shall, after payment of costs of and incident to the purchase or taking of the Commissioners land other than those payable by the Company, be applied in paying off the mortgage debt of the Commissioners.

Errors and omissions in plans may be corrected.

6. If any omission, mis-statement, or erroneous description shall have been made of any lands required for the purposes of this Act, or of the owners, lessees, or occupiers of any such lands, in the deposited plans or book of reference, the Company may, after giving ten days notice to the owners, lessees, and occupiers of the lands affected by such proposed correction, apply to two justices for the correction thereof; and if it shall appear to such justices that such omission, mis-statement, or erroneous description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission and in what respect any such matter shall have been mis-stated or erroneously described, and such certificate shall be deposited with the clerk of the peace for the county of the city of Chester, and such certificate shall be kept by such clerk of the peace along with the other documents to which it relates, and thereupon the deposited plan or book of reference shall be deemed to be corrected according to such certificate, and the Company may take any lands or property required by them in accordance with such certificate.

Copies of plans, &c. to be evidence.

7. Copies of the deposited plans and book of reference, or of any correction thereof or extracts therefrom, certified by such clerk of the peace, shall be received in all courts of justice or elsewhere as primâ facie evidence of the contents thereof.

Limiting period for compulsory purchase of lands.

8. The powers of the Company for the compulsory purchase of lands for the purposes of this Act shall not be exercised after the expiration of two years from the passing of this Act.

Power to stop up roads, &c.

9. The Company may stop up all roads, lanes, or paths within the limits of the lands acquired under the compulsory powers of this Act, and may extinguish all rights of way in or over any such roads, ways, or paths, and may appropriate the soil and site thereof to the purposes of the Company.

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Enlargement of cemetery to be part of the Company's undertaking.

10. Subject to the provisions herein contained, the lands and property from time to time acquired by the Company by virtue of this Act, and the enlargement of their cemetery by this Act authorised, shall, for all purposes of fees and charges, and for all other purposes whatsoever, be part of the undertaking of the Company, as if the Company had by the recited Act been authorised to acquire, make, and maintain the same.

Enlargement of cemetery not to be within 300 yards of certain property without consent of owner, &c.

11. No part of the extension and enlargement of the cemetery by this Act authorised shall be erected or made within three hundred yards of any house already built or of which the building shall have actually commenced prior to the first day of November one thousand eight hundred and seventy-eight, of the annual value of fifty pounds, or of any garden or pleasure ground occupied therewith, except with the consent of the owner, lessee, and occupier thereof in writing.

Certain land not to be sold.

12. The Company shall not sell or dispose of any land forming part of the enlargement of the cemetery by this Act authorised.

Power to lease land not required for enlargement of cemetery.

13. The Company may from time to time demise and lease all such portions of the said lands as are not then required for the enlargement of the cemetery, at such rent and upon such conditions and for such term of years, not exceeding in each case seven, as they think proper.

Application of reserve fund.

14. The Company may, with the sanction of two thirds of the votes of their shareholders present in person or by proxy at a meeting of the Company specially convened for the purpose, from time to time apply their reserve fund to the purposes of this Act or to such other purposes as may be determined at such meeting.

Power for the Company to raise additional capital.

15. The Company may from time to time raise capital, in addition to any capital which they are or may be authorised to raise by the recited Act, not exceeding three thousand pounds, by the issue, at the option of the Company, of ordinary shares or stock, or partly by one of those modes respectively; and the clauses and provisions of the Companies Clauses Consolidation Act, 1845, with respect to the following matters; (that is to say,)

8 & 9 Vict. c. 16.

The distribution of the capital of the Company into shares;

The transfer or transmission of shares;

The payment of subscriptions and the means of enforcing the payment of calls;

The forfeiture of shares for nonpayment of calls;

The remedies of creditors of the Company against the shareholders;

The consolidation of the shares into stock;

The general meetings of the Company and the exercise of the right of voting by the shareholders;

The making of dividends;

The giving of notices; and

The provision to be made for affording access to the special Act by all parties interested;

Part I. (relating to cancellation and surrender of shares) and Part II. (relating to additional capital) of the Companies Clauses Act, 1863, shall extend and apply to the Company and to the additional capital which they are by this Act authorised to raise. 26 & 27 Vict. c. 118.

Shares not to issue until one-fifth part paid up.

16. The Company shall not issue any share under the authority of this Act of less nominal value than ten pounds, nor shall any share vest in the person or corporation 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.

Additional capital to form part of capital of the Company.

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

Dividends on new shares or stock.

18. 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 of the same class or description proportioned to the whole amount from time to time called and paid on such new shares or to the whole amount of such stock, as the case may be.

Power to borrow

19. The Company may, in respect of the additional capital of three thousand pounds which they are by this Act authorised to raise, from time to time borrow on mortgage any sum not exceeding in the whole one thousand pounds; but no part thereof shall be borrowed until shares for so much of the said additional capital as is to be raised by means of shares are issued and accepted and one half of such capital is paid up, and the Company have proved to the justice 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 such capital have been issued and accepted, and that one half of such capital has been paid up, and that not less than one-fifth part of the amount of each separate share in such capital has been paid on account thereof before or at

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the time of the issue or acceptance thereof, and until stock for one half of the said additional capital as is to be raised by means of stock is fully paid up, and the Company have proved to such justice as aforesaid, before he so certifies, that such shares or stock, as the case may be, were issued and accepted and paid up bonâ fide, and are held by the persons or corporations to whom the same were issued, or their executors, administrators, successors, or assigns, and also, so far as the said additional capital is raised by shares, that such persons or corporations, or their executors, administrators, successors, or assigns, are legally liable for the same; and upon 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.

As to conversion of borrowed money into capital.

20. The Company shall not have power to raise the money by this Act authorised to be borrowed on mortgage, or any part thereof, by the creation of shares or stock instead of borrowing, or to convert into capital the amount borrowed under the provisions of this Act, unless in either case all dividends upon such shares or stock are limited to a rate not exceeding five pounds per centum per annum.

As to appointment of receiver.

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

Existing mortgages of Company to have priority.

22. All mortgages or bonds granted or to be granted under the authority of any former Act relating to the Company shall, during the continuance thereof and subject to the provisions of the Acts under which such mortgages or bonds were respectively granted, have priority over any mortgages granted by virtue of this Act; and nothing in this section contained shall affect any priority of the interest of any debenture stock at any time created and issued by the Company.

Application of moneys.

23. All moneys raised under this Act, whether by shares, stock, or borrowing, shall be applied for the purposes of this Act and for the general purposes of the undertaking of the Company.

Company not exempt from 20 & 21 Vict. c. 81. s. 10. or any

24. Nothing in this Act contained shall exempt or be construed to exempt the cemetery or the enlargement of the cemetery authorised by this Act, or the Company, from section 10 of the Act of the

twentieth and twenty-first years of the reign of Her present Majesty, chapter 81, entitled "An Act to amend the Burial Acts," or from the provisions of any general Act relating to cemeteries which may be passed in the present or any future session of Parliament. A.D. 1879. general Acts relating to cemeteries.

25. All the 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. Expenses of Act.

The SCHEDULE referred to in the foregoing Act.

First.—Certain lands situate in the parish of St. Mary on the Hill in the city of Chester, bounded on the north by the portion of the public road leading from Hanbridge in the said city of Chester to Saltney in the county of Flint, opposite the southern boundary of the existing cemetery, on the west by plantations and gardens belonging to His Grace the Duke of Westminster, and on the south and east respectively by other lands belonging to the said Duke, and containing in the whole four acres and thirty-four poles or thereabouts, and now in the occupation of George Edwards.

Secondly.—A certain other piece of land in the said parish, forming part of or lying at the foot of the eastern embankment of the southern approach to the Chester Grosvenor Bridge, and adjoining the existing cemetery on the western side thereof, commencing at a point on the western boundary of the said cemetery forty-one yards or thereabouts, measuring in a southerly direction, from the southern end of the tool house on the said western boundary, thence proceeding in a southerly direction along the said western boundary to the public road above mentioned, thence proceeding along the northern side of that road in a westerly direction for a distance of sixteen yards or thereabouts, and thence proceeding, first in a westerly, and then in a northerly direction, along the foot of or through the said embankment to the point of commencement above described, and containing in the whole one rood and twenty-four poles or thereabouts.

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