



ANNO OCTAVO

GEORGII VI REGIS.

A.D. 1944.

No. 35 of 1944.

An Act to establish a public cemetery at Enfield, and for incidental purposes.

[Assented to 14th December, 1944.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

PART I.

PART I.

PRELIMINARY.

- Short title.** 1. This Act may be cited as the " Enfield General Cemetery Act, 1944 ".
- Arrangement of Act.** 2. The provisions of this Act are arranged as follows :—
- PART I.—Preliminary.
- PART II.—Constitution and general powers of the trust.
- PART III.—Establishment and management of the cemetery.
- PART IV.—Miscellaneous.
- Interpretation.** 3. In this Act, unless the context otherwise requires—
- " chairman " means the chairman of the trust :
- " extraordinary vacancy " means a vacancy in an office arising otherwise than by effluxion of time :
- " financial year " means the period of twelve months ending on the thirtieth day of June :
- " member " means member of the trust, and includes the chairman :

“ Minister ” means the Minister of the Crown to whom for the time being the administration of this Act is committed by the Governor :

“ secretary ” means the secretary of the trust :

“ the cemetery ” means The Enfield General Cemetery :

“ trust ” means The Enfield General Cemetery Trust.

PART II.

PART II.

CONSTITUTION AND GENERAL POWERS OF THE TRUST.

4. (1) A trust to be called “ The Enfield General Cemetery Trust ” is hereby constituted. Constitution of trust.

(2) The trust shall be a body corporate, and shall have perpetual succession and a common seal.

(3) All courts, judges, and persons acting judicially shall take judicial notice of the seal of the trust when affixed to any instrument and shall, in the absence of proof to the contrary, presume that the same was properly affixed thereto.

5. The trust shall consist of—

Membership of trust.

- (a) a chairman appointed by the Governor on the nomination of the Minister ;
- (b) one member appointed by the Governor on the nomination of the Minister ;
- (c) two members appointed by the Governor on the nomination of the Municipal Corporation of the Town of Enfield ;
- (d) one member appointed by the Governor upon the nomination of the person for the time being administering the Diocese of Adelaide of the Church of England ;
- (e) one member appointed by the Governor upon the nomination of the person for the time being administering the Archdiocese of Adelaide of the Roman Catholic Church ;
- (f) one member appointed by the Governor on the nomination of the Minister and who, in the opinion of the Minister, is representative of other religious denominations in South Australia.

6. (1) The members first appointed pursuant to paragraphs (b) and (e) of section 5 and one of the members first appointed Term of office.

PART II.

pursuant to paragraph (c) of section 5 and to be designated by the Minister, shall hold office until the first day of July, nineteen hundred and forty-seven. The other members first appointed shall hold office until the first day of July, nineteen hundred and forty-nine.

(2) All other members shall, subject to this Act, hold office for four years.

(3) A member appointed to fill an extraordinary vacancy shall, subject to this Act, hold office only for the unexpired portion of the term of the member in whose place he is appointed.

(4) Any retiring member shall hold office until his successor is appointed.

(5) Any person ceasing to be a member by reason of the expiration of his term of office shall be eligible for reappointment if otherwise eligible under this Act.

Power of
Minister in
case of default
in nomination.

7. (1) In any case where there has, in the opinion of the Minister, been unreasonable delay in the nomination of a member by any person entitled to nominate a member; the Minister may, on behalf of that person, nominate a member for appointment by the Governor.

(2) The member so appointed shall be deemed to have been duly nominated by that person.

(3) The Minister shall give notice of the appointment in the *Government Gazette*, stating on whose behalf the member was nominated, and the notice in the *Government Gazette* of the appointment shall be conclusive evidence of the appointment and that the same was duly made.

Method of
filling up
vacancies.

8. When any vacancy occurs on the trust, whether by expiration of a member's term of office or otherwise, it shall be filled up in manner provided by this Act by appointment on nomination by the person who nominated the member whose place it is desired to fill.

Disqualification
of member.

9. No person shall be appointed a member or continue to be a member who—

(a) holds any office or place of profit in the gift or disposal of the trust ;

- (b) by himself, his partner, or otherwise, has any interest in any contract (except for advertisements or printing) with or employment under the trust: Provided that no person shall be disqualified from being a member of the trust by being a member or shareholder of or in any company incorporated under any Act or registered under any Act for registering joint stock companies and limiting the liabilities of the members thereof and consisting of twenty or more members or shareholders, by reason of any contract entered into by the company with the trust; but no such member interested by himself, his partner, or otherwise, in any contract with the trust, or being a member or shareholder of or in any such company, shall vote at any meeting of the trust on any question relating to any contract in which such person or company is interested;
- (c) is an undischarged bankrupt.

10. In addition to the retirement of members by the expiration of their terms of office, the office of a member shall be vacated on—

Casual
vacancies.

- (a) the death, lunacy, or bankruptcy of the member, or the execution by the member of a statutory deed of assignment for the benefit of his creditors, or his compounding with his creditors for less than twenty shillings in the pound, or the conviction of the member of an indictable offence;
- (b) the absence of the member from three consecutive ordinary meetings of the trust, without leave of the trust, followed by a resolution of the trust declaring the office vacant (which resolution the trust may pass if it thinks fit but shall not pass at any time later than six weeks after the last of the three consecutive meetings);
- (c) the absence of the member from the State for three consecutive months without leave of the trust;
- (d) disqualification of the member as hereinbefore in this Act provided;
- (e) the resignation of the member by notice in writing, posted or delivered to the Minister; or
- (f) the judgment or order of any competent court declaring the office of the member vacant.

PART II.**Chairman.**

11. (1) The chairman, when present, shall preside at all meetings of the trust. In the absence of the chairman from any meeting, another member, chosen for the purpose by the majority of the members present and voting, shall preside.

(2) The person presiding for the time being shall have a casting vote as well as a deliberative vote.

Quorum.

12. Four members present at a meeting shall constitute a quorum of the trust.

**Defects in
appointment
not to
invalidate
proceedings of
trust.**

13. (1) No act or proceeding of the trust shall be invalid or illegal in consequence only of the number of the members of the trust not being complete at the time of the act or proceeding.

(2) All acts and proceedings of the trust shall, notwithstanding the subsequent discovery of any defect in the appointment of any member thereof, or that any member was disqualified or disentitled to act, be as valid as if the member had been duly appointed and was qualified and entitled to act and had acted as a member of the trust, and as if the trust had been properly and fully constituted.

**Ancillary
powers of
trust.**

14. (1) The trust may—

- (a) in its corporate name purchase, take, receive, accept, hold, acquire, and possess lands, tenements, and hereditaments in fee simple, or for any less estate or for any term of years or otherwise, and goods and chattels, and may grant, sell, convey, transfer, demise, assign, or otherwise dispose of the same ;
- (b) in its corporate name arbitrate or sue, implead, and answer and be sued, impleaded, and answered in all courts and before all judges, magistrates, justices, and arbitrators whomsoever, in all actions, pleas, suits, disputes, causes, and matters whatsoever ; and
- (c) do and exercise all such further acts and powers as it is by this Act authorized to do and exercise, or as may be necessary for the doing or exercising of any of such acts or powers.

(2) The trust may accept any gift, devise or bequest for any purpose of the cemetery and may give effect to any trusts, conditions or stipulations relating thereto which are in accordance with law.

**Power of trust
to make, vary,
and discharge
contracts.**

15. (1) The trust may enter into, vary, and discharge contracts for any of the purposes of this Act.

(2) The trust may for the purposes of this Act, enter into any contract with any person.

(3) Every contract entered into by the trust may be made, varied, or discharged by the trust as follows :—

- I. A contract which, if made between private persons, would by law be required to be in writing and under seal, or to be proved by writing under seal, may be made in writing and under the common seal of the trust, and may be varied or discharged in the same manner :
- II. A contract which, if made between private persons, would by law be required to be in writing, signed by or on behalf of the parties thereto, or to be proved by writing so signed, may be in writing under the common seal of the trust, or in writing signed by the chairman or two members and countersigned by the secretary acting by the direction and on behalf of the trust, and may be varied or discharged in the same way as it was or might have been made :
- III. A contract which, if made by private persons, would be valid in law although not reduced into writing, or might be proved without writing, may be made in either of the two ways aforesaid, or by either of the chairman or secretary when acting by the direction (whether general or specific) and on behalf of the trust with or without writing, and may be varied or discharged in the same manner as it was or might have been made.

(4) Every deed, conveyance, agreement, contract under seal, or instrument which it is necessary for the trust to execute or sign and is not otherwise provided for by this section, shall have the common seal of the trust affixed thereto, and be signed by the chairman or two members and countersigned by the secretary.

(5) Every deed, conveyance, agreement, contract, or instrument made in writing under the common seal of the trust shall be signed by the chairman or two members and countersigned by the secretary.

16. (1) The trust shall appoint a secretary for the purposes of this Act.

Appointment
of secretary
and other
officers.

(2) The trust may appoint and employ such other officers and servants as it deems necessary to enable it to carry into execution the various powers and duties vested in or imposed on it by this Act.

(3) The secretary and all other persons appointed by the trust shall act under the control of the trust.

PART II.

Payment of salaries, etc.

17. (1) The trust may pay to every person appointed or employed by it such salary, allowances, fees, wages, pensions, or retiring allowances as it deems reasonable or proper, and may pay the premiums in respect of the fidelity guarantee or workmen's compensation insurance policies of its officers and servants.

(2) The trust may contribute to any sick, accident, or pension fund for its officers and servants or to any fund for the purpose of providing retiring benefits for its officers and servants.

Committee.

18. The trust may from time to time appoint a committee or committees of its members, and may delegate to any such committee such of its powers and duties as it thinks fit, and may at any time alter, vary, or revoke any such delegation.

Minute-book.

19. (1) The trust shall keep a minute-book in which the proceedings of each meeting and the business performed thereat shall be entered.

(2) The minutes of each meeting shall be submitted for confirmation at a subsequent meeting of the trust, and, if confirmed, shall be signed by the chairman or other person presiding at the subsequent meeting. All entries in the minutes so signed shall be received in all courts and tribunals and by all persons as sufficient evidence of the accuracy of the matters therein recorded until the contrary is proved.

PART III.**PART III.****ESTABLISHMENT AND MANAGEMENT OF THE CEMETERY.**

Transfer of land to trust.

20. Upon payment by the trust of an amount calculated as provided in the first schedule The Synod of the Church of England in the Diocese of Adelaide Incorporated shall transfer to the trust an estate of fee simple in the land described in the second schedule.

Constitution of cemetery.

21. (1) Upon transfer to the trust of the land referred to in section 20, that part of the said land shown in the plan in the third schedule and therein hachured in black shall be a public cemetery and shall be held by the trust for the purposes of a public cemetery and shall be known as "The Enfield General Cemetery".

(2) The provisions of section 586 of the Local Government Act, 1934-1941, shall not apply to the cemetery.

22. (1) The portion of the land transferred as provided by section 20 and not included in the cemetery shall be sold by the trust at such times and in such manner and upon such terms and conditions as the trust thinks fit.

Provision as to balance of land transferred.

(2) The proceeds of the sale of the said land or any portion thereof shall be applied in manner provided in the fourth schedule.

(3) No part of the said land shall be used by the trust as a cemetery.

23. (1) From moneys provided by Parliament for the purpose the Minister may advance to the trust—

Advance to trust.

(a) the moneys required to be paid by the trust pursuant to section 20 ; and

(b) a sum of six thousand pounds to be advanced in such instalments as the Minister thinks fit but no part of such sum shall be advanced after the thirtieth day of June, nineteen hundred and fifty-one.

(2) All moneys advanced pursuant to this section shall, until repaid to the Minister, bear interest at the rate of four pounds per centum per annum which shall be payable to the Minister by the trust in the manner provided by the fourth schedule.

(3) The moneys advanced pursuant to this section shall be repaid to the Minister by the trust in the manner provided by the fourth schedule.

24. (1) After the thirtieth day of June, nineteen hundred and fifty-one, the trust may borrow from any bank by way of overdraft any moneys necessary for the payment of any working expenses or maintenance costs of the cemetery.

Power of trust to borrow on overdraft.

(2) Any money so borrowed shall be a charge on the revenue of the trust.

25. The trust shall apply all moneys received as revenue in the order following :—

Application of revenue.

I. In the payment of the working expenses and maintenance costs of the cemetery and the repayment of any overdraft incurred for the payment of any such working expenses or maintenance costs :

II. In payment in manner provided by the fourth schedule of the interest payable on the moneys advanced to the trust by the Minister :

III. In the repayment in manner provided by the fourth schedule of the moneys advanced to the trust by the Minister.

Reserve fund.

26. (1) The trust may in any financial year, after providing for the matters referred to in section 25, set aside out of its revenue such amount as the trust thinks fit to form a reserve fund to provide for the payment of future working expenses and maintenance costs of the cemetery. The trust may expend the reserve fund or any part thereof for any such purpose.

(2) The reserve fund, and any interest thereon or income therefrom shall, until expended as aforesaid, be invested in any securities of the Government of the State or the Commonwealth, or shall be deposited at interest with the Treasurer of the State or a bank in the State. The said interest and income shall form part of the reserve fund.

Books and accounts.

27. (1) The trust shall keep proper books of account for the purpose of recording its income and expenditure.

(2) The financial year of the trust shall end on the thirtieth day of June in every year.

(3) The books shall be balanced in respect of every financial year on or before the first day of October after the close of the financial year.

Statement of accounts and balance-sheet.

28. (1) On or before the first day of October in every year the trust shall cause to be prepared a statement and balance-sheet of the accounts of the trust for the financial year then last past.

(2) A copy of the statement and balance-sheet shall, on or before the first day of October—

(a) be published by the trust in the *Government Gazette* ;
and

(b) be forwarded by the trust to the Minister.

Auditor.

29. (1) The Auditor-General shall make an annual audit of the trust's accounts and for the purpose of the audit may exercise any of the powers which he could exercise for the purpose of auditing the accounts of a Government department.

(2) The trust shall for every audit pay to the Treasurer of the State a reasonable fee of an amount approved by the Treasurer.

Banking account.

30. (1) All moneys received by the trust shall be paid to the credit of the trust with some bank in Adelaide or with the Treasurer of the State.

(2) No money shall be withdrawn from any such bank or the Treasurer of the State except by cheque signed by a member and the secretary.

31. (1) Members of the trust shall be paid by the trust such fees as are from time to time fixed by the Minister but not exceeding in the case of the chairman fifty pounds a year or in the case of other members twenty-five pounds a year.

Payment of
members.

(2) The trust may pay to any member any travelling or other expenses necessarily incurred by the member on the business of the trust.

32. (1) The trust shall have the care, control, and management of the cemetery and may do all things necessary to conduct the cemetery as a public cemetery.

Management of
the cemetery.

(2) The trust may erect any buildings and make any improvements which the trust considers necessary for the conduct of the cemetery.

(3) Subject to the Cremation Act, 1891, the trust may erect and maintain a crematorium within the cemetery.

33. (1) The trust may set apart any portion of the cemetery for the burial of persons of any particular religious denomination. If a request in writing is made to the trust by any religious denomination requesting that a portion of the cemetery be set apart for the burial of persons of that denomination, the trust shall set apart a portion of the cemetery for that purpose.

Power to set
apart portion
of cemetery for
religious
denominations
and deceased
members of the
armed forces.

(2) The trust shall set apart a portion of the cemetery for the burial of persons who are or who have been members of any naval, military, or air force of the Commonwealth or any other part of His Majesty's Dominions.

34. The minister of any religious denomination for which any portion of the cemetery is specially set apart shall have free access and admission to that portion of the cemetery at all times as he thinks fit, and may freely exercise his spiritual functions therein without any hindrance or disturbance.

Ministers of
religion to
have free
access.

35. If any portion of the cemetery is set apart for the burial of persons of any particular religious denomination the trust may, after approving the plans thereof, permit the members of that religious denomination to erect in the said portion of the cemetery a suitable mortuary church or chapel for the performance of the rites and ceremonies in the burial of the

Erection of
mortuary
chapels by
religious
denominations

PART III.

dead according to the usages of that denomination. Any such permission may be granted subject to any conditions thought fit by the trust.

Right to performance of religious ceremony.

36. The trust shall not by any regulation or any act, matter, or thing at any time interfere directly or indirectly with the performance of any religious ceremony in the burial of the dead according to the usage of the communion to which the deceased has belonged.

Power to grant burial rights.

37. (1) The trust may grant rights for burial purposes over any part of the cemetery.

(2) No such burial right shall be granted for any longer term than ninety-nine years but may be renewed from time to time for any period not exceeding ninety-nine years.

(3) Any such burial right may grant the exclusive right of burial in the land therein comprised.

Power to make and publish scale of fees.

38. (1) The trust may from time to time fix a scale of fees and charges which shall be payable for the grant of burial rights and in respect of other rights and services granted or given in respect of the cemetery.

(2) Different fees may be fixed with respect to different parts of the cemetery, with respect to different classes of burial rights, and with respect to different kinds of other rights and services.

(3) Any such scale of fees and charges shall be published in the *Government Gazette*.

General power of maintenance, etc.

39. The trust may do anything necessary for the upkeep, maintenance, improvement, and management of the cemetery and may expend its moneys for any such purpose.

Plan of cemetery.

40. (1) The trust shall cause a plan to be made of the cemetery.

(2) The plan shall be made on a scale large enough to show the situation and distinctive number of every grave and burial place, and to show the information required to be placed thereon pursuant to section 41.

Register of burials.

41. (1) All burials within the cemetery shall be registered in a book to be provided and kept by the trust for that purpose, and shall be noted on the plan required to be made pursuant to section 40.

(2) In the register-book shall be distinguished in what parts of the cemetery the several bodies are buried.

(3) The register-book shall be indexed so as to facilitate searches for entries therein.

(4) Every book and document purporting to be any such register-book or a copy or an extract therefrom shall be received in all courts as evidence of the burials entered therein.

42. (1) All cremations effected within any crematorium of the trust shall be registered in a register-book to be provided and kept by the trust.

Register of
cremations.

(2) The register-book shall be indexed so as to facilitate searches for entries therein.

(3) Every book and document purporting to be any such register-book or a copy or extract therefrom shall be received in all courts as evidence of the cremations entered therein.

PART IV.

PART IV.

MISCELLANEOUS.

43. (1) The trust may make regulations not inconsistent with any regulation made pursuant to section 595 of the Local Government Act, 1934-1941, for all or any of the following matters :—

Regulations.

- I. For the general management of the cemetery :
- II. For regulating and controlling the digging, making, and maintenance of graves and vaults in the cemetery and fixing the position thereof :
- III. For regulating and controlling the erection and maintenance in the cemetery of monuments, tombstones, railings, fences and other structures :
- IV. For protecting the buildings, monuments, tombstones, railings, fences, other structures, shrubberies, plantations, and enclosures in the cemetery and generally for maintaining good order and proper conduct in the cemetery and for the protection of any property therein :
- V. For regulating the duties of the officers and servants of the trust :
- VI. For regulating the proceedings of the trust :
- VII. For any other matters necessary or desirable for carrying this Act into effect :
- VIII. For imposing penalties not exceeding fifty pounds for the breach of any regulation.

(2) No such regulation shall be made except with the approval of the Governor.

Liability of
trust for local
government
rates, etc.

44. (1) Except as provided by subsection (2), the trust shall, for the purposes of the Local Government Act, 1934-1941, and in respect of any land of which the trust is the owner or occupier, be subject to the duties and liabilities imposed by that Act upon owners or occupiers of ratable property.

(2) The trust shall pay to the Corporation of the Town of Enfield by way of all rates which may be imposed by the said corporation upon the land comprised in the cemetery the amounts specified in the fifth schedule and, notwithstanding the provisions of the Local Government Act, 1934-1941, no other amount shall be payable by the trust to the said corporation by way of rates in respect of the said land. The said corporation shall not make an assessment of the land comprised in the cemetery.

Summary
proceedings.

45. All proceedings in respect of any offence against this Act shall be disposed of summarily.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

J. M. NAPIER, Lieutenant-Governor.

SCHEDULES.

THE FIRST SCHEDULE.

AMOUNT TO BE PAID FOR LAND TO BE TRANSFERRED.

The amount to be paid pursuant to section 20 by the trust to The Synod of the Church of England in the Diocese of Adelaide Incorporated shall be the total of the following amounts, namely :—

- (a) The sum of £7,069 4s. 4d. (being the amount of the purchase price paid by the said Synod for the land described in the second schedule) together with any amount paid by the said Synod in respect of stamp duties and other charges payable upon the transfer to the said Synod of the said land :
- (b) Interest on the total amount referred to in paragraph (a) calculated at the rate of 3½ per centum from 12th December, 1942, until the date of payment to the said Synod pursuant to section 20 :
- (c) Any amount paid by the said Synod since 12th December, 1942, by way of rates or taxes payable in respect of the said land :

Provided that from the said total amount there shall be deducted any amounts received or payable to the said Synod pursuant to any agreement for the leasing or letting of the said land.

THE SECOND SCHEDULE.

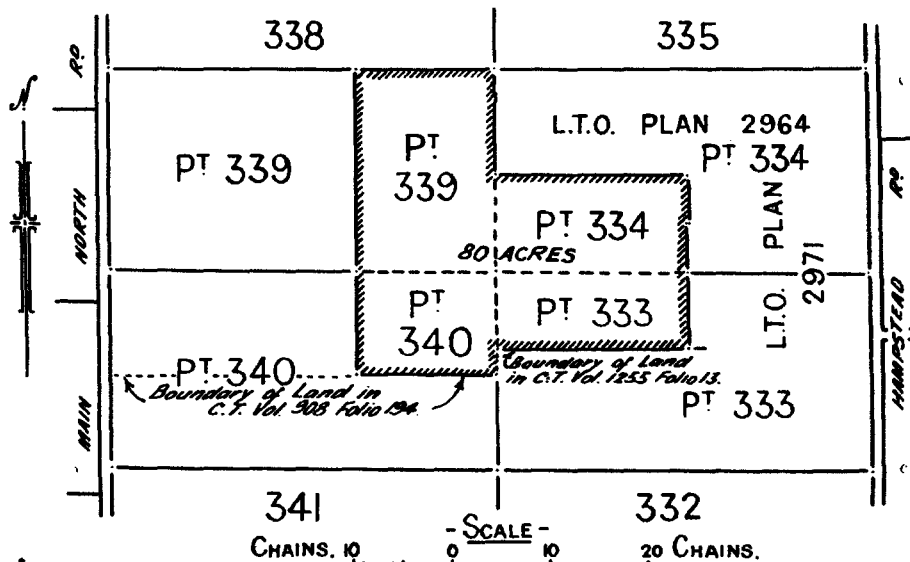
LAND TO BE TRANSFERRED.

(a) That piece of land situated in the Hundred of Yatala, County of Adelaide, being portion of section 339 containing 16 acres 2 roods and 20 perches or thereabouts, and portion of section 340 containing 40 acres 2 roods and 20 perches or thereabouts and being the whole of the land comprised in certificate of title register book volume 908 folio 194.

(b) That piece of land situated in the Hundred of Yatala, County of Adelaide, being portion of section 333 containing 15 acres and 5 perches or thereabouts, portion of section 334 containing 20 acres 1 rood and 30 perches or thereabouts, and portion of section 339 containing 64 acres 1 rood and 20 perches or thereabouts, and being the whole of the land comprised in certificate of title register book volume 1255 folio 13.

THE THIRD SCHEDULE.

LAND TO BE HELD FOR THE PURPOSE OF A PUBLIC CEMETERY.



THE FOURTH SCHEDULE.**FINANCIAL PROVISIONS.**

1. Until 30th June, 1950, simple interest upon all amounts advanced to the trust pursuant to section 23 shall accrue, but, except as provided by paragraph 6 of this schedule, shall not be payable. Upon 30th June, 1950, all such interest then unpaid shall be capitalized and added to the amount so advanced, and shall for the purposes of this Act be deemed to be part of the amount advanced.

2. Thereafter interest shall be payable upon the total of the amount advanced which for the time being is unrepaid. Interest shall be payable annually on 30th June in every year, the first payment to become due and payable on 30th June, 1951.

3. The amount advanced to the trust shall be repaid by the trust as follows:—

(a) During the ten financial years commencing 1st July, 1952, the trust shall annually repay on the 30th June in every year the sum of £400, the first payment to be made on 30th June, 1953:

(b) During the next ten financial years the trust shall annually repay on the 30th June in every year, the sum of £525:

(c) Thereafter the trust shall annually repay on the 30th June in every year the sum of £675 until the amount advanced is repaid.

4. The Minister may upon such terms and conditions as he thinks fit extend the time for payment of any sum required by this schedule to be paid by the trust.

5. The trust may at any time pay off the whole or any part of the amount advanced to the trust.

6. Any amounts received by the trust as the proceeds of the sale of land pursuant to section 22 shall be applied as follows:—

(a) If the proceeds are received before 1st July, 1950, two-thirds of the proceeds shall be applied firstly, in payment of any interest accruing on the amount advanced to the trust, and secondly, in repayment of the amount advanced to the trust, and one-third of the proceeds shall be paid into the reserve fund of the trust:

(b) If the proceeds are received after 30th June, 1950, two-thirds of the proceeds shall be applied in repayment of the amount advanced to the trust and one-third of the proceeds shall be paid into the reserve fund of the trust.

Payments made pursuant to this paragraph in repayment of the amount advanced to the trust shall be in addition to repayments required to be made pursuant to paragraph 3 of this schedule.

THE FIFTH SCHEDULE.**AMOUNTS PAYABLE AS LOCAL GOVERNMENT RATES IN RESPECT OF THE CEMETERY.**

The following amounts shall be payable by the trust as local government rates in respect of the land comprised in the cemetery:—

(a) During the financial year commencing on 1st July, 1945, and each of the next subsequent four financial years—£20:

(b) During each of the next succeeding ten financial years—£30:

(c) During each of the next succeeding ten financial years—£50:

(d) During each of the next succeeding ten financial years—£75:

(e) During each subsequent financial year—£100.