

Limitation of
certiorari.

R. S. 929.

12. No writ of *certiorari* shall be allowed or issued on any judgment, order or proceeding that shall have been entered or obtained in any court of record of this state, or that shall hereafter be entered or obtained, unless the same be issued in eighteen months after the entering or obtaining the same. (a)

(a) Where a party applied for a *certiorari* at Nov. term, 1828, and had a rule to show cause on which the argument did not take place until May term, 1831, the writ then granted was considered as within the time. *Stevens v. Enders*, 1 Gr. 271. It may well be doubted whether the act

as to limitation of time is not so imperative that it must be submitted to even in case of fraud, *Chamberlin v. Barclay*, 1 Gr. 244. It may be issued to bring up an order of two justices in a pauper case after eighteen months, *Bethlehem v. Franklin*, 2 Dutch. 210. See *Carman v. Carman*. Pen. §633.

Cemeteries.

1. Formation of cemetery associations. Name. Trustees.
2. Certificate to be made, acknowledged and recorded in county clerk's office.
3. Upon recording certificate association deemed incorporated.
4. Association may hold land not exceeding seventy-five acres.
5. Annual election of trustees.
6. Trustees to make report annually. Proceedings when no election of trustees at regular time.
7. Association may hold property bequeathed or given upon trust.
8. Lands and property exempt from taxes and assessments and not liable to be sold on execution.
9. Burying grounds not liable to be sold on execution.
10. Lots designated on maps to be indivisible. Appropriation of proceeds of sales of lots.
11. After an interment a lot inalienable. Proviso.
12. Penalty for wilful destruction or defacement of tombs, fences, trees, &c.

P. L. 1848, p. 9.

" 1851, p. 254.

" 1853, p. 399.

" 1868, p. 832.

" 1873, p. 143.

An act to authorize the incorporation of rural cemetery associations and regulate cemeteries.

Revision—Approved April 9, 1875.

Formation of
cemetery associa-
tions.

P. L. 1851, p. 254.

Name.

Trustees.

1. Any number of persons residing in this state, not less than seven, who shall desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place for the burial of the dead, may meet at such time and place as they or a majority of them may agree, and appoint a chairman and secretary by the vote of a majority of the persons present at the meeting and proceed to form an association by determining on a corporate name by which the association shall be called and known, and the number of trustees to manage the concerns of the association, which number shall not be less than six nor more than twelve, and thereupon may proceed to elect by ballot the number of trustees so determined on; and the chairman and secretary shall immediately after such election divide the trustees by lot into three classes; those of the first class to hold their office one year; those in the second class two years; and those in the third class three years; but the trustees of each class may be re-elected if they shall possess the qualification hereinafter mentioned; the meeting shall also determine on what day in each year the future annual elections of trustees shall be held.

Certificate to be
made, acknowl-
edged and re-
corded in county
clerk's office.

2. The chairman and secretary of the meeting shall within three days after such meeting make a written certificate, and sign their names thereto, and acknowledge the same before an officer authorized to take the proof and acknowledgment of conveyances in the county where such meeting shall have been held, which certificate shall state the names of the associates who attended such meeting, the corporate name of the association determined upon by the majority of the persons who met, the number of trustees fixed on to manage the concerns of the association, the names of the trustees chosen at the meeting, and their classification, and the day fixed on for the annual election of trustees; which certificate it shall be the duty of the chairman and secretary of such meeting to cause to be recorded in the clerk's office in the county in which the meeting was held, in a book to be appropriated to the recording of certificates of incorporation.

3. Upon such certificate, duly acknowledged as aforesaid, being recorded,

the association mentioned therein shall be deemed legally incorporated, and shall have and possess the general powers and privileges of a corporation; the affairs and property of such association shall be managed by the trustees, who shall annually appoint from among their number a president and a vice president, and shall also appoint a secretary and a treasurer, who shall hold their places during the pleasure of the board of trustees; and the trustees may require the treasurer to give security for the faithful performance of the duties of his office.

Upon recording certificate association deemed incorporated.

4. Any association incorporated under this act may take, by purchase or devise, and hold, within the county in which the certificate of their incorporation is recorded, not exceeding seventy-five acres of land, and not exceeding in taxable value seventy-five thousand dollars, to be held and occupied exclusively for a cemetery for the burial of the dead; such land, or such parts thereof as may from time to time be required for that purpose, shall be surveyed and subdivided into lots or plats of such size as the trustees may direct, with such avenues, paths, alleys and walks as the trustees deem proper, and a map or maps of such surveys shall be filed in the clerk's office of the county in which the land shall be situated; and after filing such map, the trustees may sell and convey the lots or plats designated on such map upon such terms as shall be agreed, and subject to such conditions and restrictions, to be inserted in or annexed to the conveyances, as the trustees shall prescribe; the conveyances to be executed under the common seal of the association, and signed by the president or vice-president and the treasurer of the association; any association incorporated under this act may hold personal property to an amount not exceeding five thousand dollars, besides what may arise from the sale of lots or plats.

Association may hold land, not exceeding seventy-five acres.

P. L. 1853, p. 399.

5. The annual election for trustees to supply the place of those whose term of office expires, shall be holden on the day mentioned in the certificate of incorporation, and at such hour and place as the trustees shall direct, at which election shall be chosen such number of trustees as will supply the places of those whose term expires; the trustees chosen at any election, subsequent to the first, shall hold their places for three years and until others shall be chosen to succeed them; the election shall be by ballot, and every person of full age who shall be proprietor of a lot or plat in the cemetery of the association, or if there be more than one proprietor of any such lot or plat, then such one of the proprietors as the majority of joint proprietors shall designate to represent such lot or plat may, either in person or by proxy, give one vote for each plat or lot; and the persons receiving the largest number of the votes given at such election shall be trustees to succeed those whose term of office expires; but in all the elections after the first, the trustees shall be chosen from among the proprietors of lots or plats; and the trustees shall have power to fill any vacancy in their number occurring during the period for which they hold their office; public notice of the annual elections shall be given in such manner as the by-laws of the corporation shall prescribe.

Annual election of trustees.

6. The trustees, at each annual election, shall make reports to the lot proprietors of their doings, and of the management and condition of the property and concerns of the association; if the annual election shall not be held on the day fixed in the certificate of incorporation, or if, from any cause, trustees should not be then elected, the trustees shall have power to appoint another day, not more than sixty days thereafter, and shall give public notice of the time and place at which time the election may be held, with like effect as if holden on the day fixed on in the certificate; the office of the trustees chosen at such time to expire at the same time as if they had been chosen at the day fixed by the certificate of incorporation.

Trustees to make report annually. Proceedings when no election of trustees at regular time.

7. Any association, incorporated pursuant to this act, may take and hold any property, real or personal, bequeathed or given upon trust to apply the income thereof, under the direction of the trustees of such association, for the improvement or embellishment of such cemetery, or the erection or preservation of any buildings, structures, fences, or walks erected or to be erected, upon the lands of such cemetery association, or upon the lots or plats of any of the proprietors, or for the repair, preservation, erection or renewal of any tomb, monument, grave stone, fence,

Association may hold property bequeathed or given upon trust.

railing or other erection in or around any cemetery lot or plat, or for planting and cultivating trees, shrubs, flowers or plants in or around any such lot or plat, or for improving or embellishing such cemetery, or any of the lots or plats, in any other manner or form consistent with the design and purposes of the association, according to the terms of such grant, devise or bequest.

Lands and property of association exempt from taxes and assessments, and not liable to be sold on execution.

P. L. 1868, p. 832.

8. The cemetery lands and property of any association formed pursuant to this act, or otherwise incorporated, as well as bonds and mortgages given to secure the purchase money of such cemetery lands, shall be exempt from all public taxes, rates or assessments, and shall not be liable to be sold on execution, or be applied in payment of debts due from any individual proprietors; but the proprietors of lots or plats in such cemeteries, their heirs or devisees, may hold the same exempt therefrom, so long as the same shall remain dedicated to the purpose of a cemetery, and during that time, no street, road, avenue, or thoroughfare shall be laid through such cemetery, or any part of the lands held by such association for the purpose aforesaid, without the consent of the trustees of such association, except by special permission of the legislature of the state.

Burying grounds not liable to be sold on execution

P. L. 1848, p. 9.

Amended.

Proviso.

9. All lands lying within the bounds of any cemetery or burying ground belonging to or used by any religious society in this state, shall be reserved, for the use of the owners thereof, against all causes in action heretofore or hereafter arising, except upon mortgage thereof, and shall not be liable to be seized, taken or sold by virtue of any judgment, decree, order, execution or other process made or rendered by or issued out of any court in this state; *provided*, that all liens existing upon land, before the same is converted into burying grounds, shall be exempt from the operation of this act.

Lots designated on maps to be indivisible.

P. L. 1851, p. 254.

Appropriation of proceeds of sales of lots.

10. All lots or plats of ground designated on the maps filed as aforesaid, and numbered as separate lots by the corporation, shall be indivisible, but may be held and owned in undivided shares; one half at least of the proceeds of all sales of lots or plats shall be first appropriated to the payment of the purchase money of the lands acquired by the association, until the whole purchase money shall be paid, and the residue thereof to preserving, improving and embellishing the said cemetery grounds, and the avenues and roads leading thereto, and to defraying the incidental expenses of the cemetery establishment; and after the payment of the purchase money, and the debts contracted therefor, and for surveying and laying out the land, the proceeds of all future sales shall be applied to the improvement, embellishment and preservation of such cemetery and for incidental expenses, and to no other purpose or object so long as such embellishment is incomplete.

After an interment a lot inalienable.

Proviso.

P. L. 1873, p. 143.

Interments.

11. Whenever the said land shall be laid off into lots or plats, and such lots or plats, or any of them, shall be transferred to individual holders, and after there shall have been an interment in a lot or plat so transferred, such lot or plat, from the time of such interment, shall be forever thereafter inalienable, and shall, upon the death of the holder or proprietor thereof, descend or go to the heirs-at-law or devisee of such holder or proprietor; *provided, nevertheless*, that any one or more of such heirs-at-law may release and convey to any other of the said heirs-at-law, or unto the widowers, widow or next of kin of any deceased person interred in such lot or plat, his or their interest in the same, on such conditions as shall be agreed on and specified, a copy of which conveyance shall be recorded in the clerk's office of the county within which the said cemetery shall be situated; *and provided further*, that the body of any deceased person shall not be interred in any such lot or plat, unless it be the body of a person having at the time of such decease an interest in such lot or plat, or the relative of some person having such interest, or the wife of such person, or her relative, except by the consent of all persons having an interest in such lot or plat.

Penalty for wilful destruction or defacement of tombs, fences, trees, &c.

P. L. 1851, p. 254.

12. Any person who shall wilfully destroy, mutilate, deface, injure, or remove any tomb, monument, grave-stone, building, or other structure, placed in any cemetery of any association incorporated under this act or otherwise, or any fence, railing, or other work for the protection or ornament thereof, or of any tomb, monument, or grave-stone, or other structure

aforesaid, or of any lot or plat within such cemetery, or shall wilfully destroy, cut, break, or injure any tree, shrub, or plant within the limits of such cemetery, shall be deemed guilty of a misdemeanor; and such offender shall also be liable in an action of trespass, to be brought in all such cases in the name of such association, to pay all such damages as shall have been occasioned by his unlawful act or acts; such money, when recovered, shall be applied by the trustees to the reparation or restoration of the property so destroyed or injured.

Chancery.

I. THE COURT WHEN OPEN.

1. Terms of court.
2. Term lost, suits, etc., continued.
3. Court always open for certain purposes.
4. Final decrees in vacation.

II. SUBPCENA AND PROCESS FOR APPEARANCE.

5. Bill to be first filed.
6. Process endorsed, signed and sealed.
7. Names in one process.
8. Notice to be added to subpoena.
9. When ticket to issue.
10. Proceedings when christian name of married woman cannot be ascertained.
11. Married woman may appear, plead, &c.
12. Proceedings to be valid and binding.
13. Subpcena, how served.
14. Who to serve process.
15. What equivalent to service of subpoena.
16. *Ne exeat*.
17. When security for costs required or solicitor held responsible or suit stayed.

III. PROCEEDINGS AGAINST NON-RESIDENTS.

18. Non-resident defendants, how notified. Decree *pro confesso* against.
19. Non-residents bound by decree. In certain cases security may be required.
20. Proof of matters in two preceding sections, before whom made.
21. Enforcing decree against absent defendants.
22. Notice to non-resident officers of corporations.

IV. PLEADINGS AND PROCEEDINGS AFTER RETURN OF SUBPCENA.

23. Bill may call for answer without oath.
24. Plea or demurrer, when to be filed.
25. Answer, when to be filed.
26. Frivolous demurrer.
27. Affidavit and certificate to plea or demurrer.
28. Decree *pro confesso* in term or vacation.
29. Issue on plea.
30. Demurrer first argued.
31. If plea or demurrer over-ruled, answer must be filed.
32. Costs on plea or demurrer.
33. When exceptions or replication must be filed.
34. Rule to refer exceptions.
35. Costs on exceptions.
36. When second answer required.
37. When third answer required and costs.
38. Consequences if insufficient.
39. Cross-bill and answers.
40. When cause at issue.
41. Persons acquiring interest after bill filed may be made a party on petition.
42. Parties may be added either before or after final decree.

V. EVIDENCE—INTERROGATORIES—EXAMINATION OF WITNESSES.

43. Hearing on bill and answer.
44. Interrogatories to complainant.
45. Examination of witnesses.
46. Proceedings and evidence when printed.

VI. SETTING DOWN THE CAUSE AND THE HEARING.

47. When cause to be set down for hearing. Proviso.
48. What if complainant do not attend.
49. What if defendant do not attend.
50. Papers used at hearing.

VII. DECREE, ITS ENROLLMENT AND EFFECT.

51. Pleadings, etc., to be enrolled.
52. No enrollment if bill dismissed by consent.
53. Clerk, when to enroll.
54. When enrolled by clerk's successor.
55. How decrees signed after Chancellor goes out of office.
56. Effect of decrees. Lands not bound until abstract filed in Supreme Court Clerk's office.
57. *Lis pendens*. Notice of suit to be filed in county clerk's office.
58. Clerk to file and record notice.
59. Fees.
60. Proceedings in case of final decree for defendants, when a *lis pendens* has been filed.
61. Proceedings in case the Chancellor orders the lands and real estate to be discharged.
62. Fees of county clerk.
63. Effect of decree to convey lands.

VIII. FINAL PROCESS AND DUTY AND LIABILITY OF SHERIFF.

64. Process after decree.
65. Time of the *feri facias*.
66. When sheriff to be amerced. Proviso.
67. Amercement of sheriff in certain cases.
68. Further remedy to party aggrieved.
69. Sheriff not returning process to be in contempt.
70. Proceedings in case of death of sheriff.

IX. PROCEEDINGS IN FORECLOSURE.

71. Mortgaged premises may be sold under decree.
72. Proceedings under *feri facias*. Surplus money invested.
73. *Supersedeas* in case absent defendant enter appearance.
74. Sale when the whole of mortgage money not due.
75. Stay of sale on appearance, and no plea, answer or demurrer.
76. Decree for excess of debt over proceeds of sale.
77. Satisfaction of decree to be entered.
78. Persons whose mortgages are not recorded, bound by decree. May be made parties.
79. Fees for searches allowed.