CREMATION ACT, 1891-1936.

BEING

CREMATION ACT, 1891, No. 520 OF 1891 [ASSENTED TO 19TH DECEMBER, 1891.]

AS AMENDED BY

CREMATION ACT AMENDMENT ACT, 1918, No. 1333 OF 1918 [ASSENTED TO 21ST NOVEMBER, 1918.]

AND

STATUTE LAW REVISION ACT, 1936, No. 2293 OF 1936 [ASSENTED TO 8TH OCTOBER, 1936.]

An Act to regulate the process of cremation.

Preamble.

WHEREAS it is expedient to legalise the process of cremation—Be it Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

Short title and interpretation.
Cf. U.K., 2, Edw. 7, c. 8.
Amended by 1333, 1918, s. 3.

1. This Act may be cited as the "Cremation Act, 1891-1936," and in its construction the word "crematorium" shall mean a place furnished with apparatus in accordance with the provisions of this Act for the purpose of reducing the human body to ashes after death, and such purpose is in this Act referred to as "cremation"; "prescribed" shall mean prescribed by regulations under this Act; and "registrar" shall mean the Principal Registrar of Births, Deaths, and Marriages, the Deputy Registrar of Births, Deaths, and Marriages, or the registrar of births, deaths, and marriages of the district in which the death occurred in respect of which the certificates mentioned in section 5 of this Act are required or the person lawfully acting for such registrar.

Crematoria may be established.
Cf. U.K., 2, Edw. 7, c. 8, s. 4.
Amended by S.L.R. Act, 1936.

2. Subject to the conditions and provisions of this Act, a crematorium may be established by any person, provided the site and plans of such crematorium be approved by the Central Board of Health as constituted under the authority of the Health Act, 1935, and that the apparatus to be employed

s. 1. The expression "Registrar-General of Births and Deaths" and "Deputy Registrar-General of Births and Deaths" respectively altered to "Principal Registrar of Births, Deaths, and Marriages" and "Deputy Registrar of Births, Deaths, and Marriages" pursuant to the Acts Republication Act, 1934.

for cremation be also approved by such board. But no crematorium shall be used for the purpose of cremation unless licensed in the prescribed manner by the Governor.

3. Every applicant for a licence for a crematorium must satisfy the Governor, by statutory declaration and by such other evidence as the Governor may require—

Applicant to fulfil certain requirements.

(I.) that he is the owner in fee-simple of the site for such crematorium described in his application: or

(II.) that he has the written consent to such application of such owner: or

(III.) that, if such site be situated in any cemetery or burial-ground, he has the written consent to such application of the persons having the control and management of such cemetery or burial-ground:

(IV.) that notice of intention to apply for such licence shall have been given by advertisement at least once in each week for eight successive weeks immediately preceding the date of such application in a public newspaper circulating in the city, town, or place within which it is proposed to erect such crematorium: and

(V.) that no objection to the establishment of such crematorium shall have been lodged with the registrar of births, deaths, and marriages of the district within which such crematorium is proposed to be erected by any owner or occupier of any house or land situated within one hundred yards of the site of such proposed crematorium; but this last condition shall not apply to any crematorium which it is proposed shall be erected within any cemetery.

4. The cremation of the body of any human being, otherwise than in a licensed crematorium, shall be deemed illegal and a common nuisance.

Cremation, when illegal, &c.

U.K., 2, Edw. 7, c. 8, s. 10.

5. The cremation of any human body after death shall not be lawful unless the person having charge of such body or taking the same to a crematorium shall lodge with the person in charge of such crematorium a "cremation permit," issued by the registrar (which permit such registrar is hereby required, subject to the provisions hereinafter contained, to

Conditions of cremation.

Cf. U.K., 2, Edw. 7, c. 8, s. 7.

grant in the prescribed form to any person demanding the same). But no such permit shall be issued by the registrar—

(I.) unless upon the receipt by the registrar of certificates from two legally-qualified medical practitioners, one of such certificates stating that the practitioner giving the same had been in professional attendance on the deceased, and both such certificates stating that the deceased died from natural causes: or

(II.) unless a legally-qualified medical practitioner shall, after a *post mortem* examination of all the vital organs of the deceased, certify to the registrar that the deceased died from natural causes: or

(III.) unless a coroner or justice of the peace who has held an inquest or inquiry as to the cause of death of any person shall first have certified to the registrar that such cause has been duly inquired into, and that no further examination of the body was necessary.

Provided always that in no case shall the registrar issue any such permit until and unless the death of the person to be cremated shall have been duly registered as by law required. And if any registrar shall issue any "cremation permit" without having first received the proper certificates as prescribed by this section, or if any person in charge of any crematorium shall without any such "cremation permit," or before receipt of the same, cremate or permit the cremation of any human body, such registrar or person, as the case may be, shall be guilty of a misdemeanour, and may be fined in any sum not exceeding five hundred pounds, or be imprisoned (with or without such fine) for any term not exceeding two years.

Certificate where death occurs in other State of Commonwealth.

Inserted by 1333, 1918, s. 4, as amended by S.L.R. Act, 1936.

5a. In cases where the death in respect of which the certificates mentioned in section 5 are required, occurred in some part of the Commonwealth other than South Australia, the registrar may accept for the purposes of that section the certificates of two medical practitioners who are by the law of the part of the Commonwealth wherein such death occurred entitled to practise and are actually practising as medical practitioners and who are by such law entitled to give a certificate of the cause of death, if the registrar is satisfied that such certificates are genuine.

Relatives, &c. may object to cremation in cases where not directed by deceased person.

6. It shall not be lawful, except as hereinafter mentioned, to cremate the body of any deceased person if his widow or any of his next of kin, whether under or above the age of

twenty-one years, or his executors or any of them, shall object thereto; but in all cases where a deceased person shall have left an attested memorandum directing that his body shall be cremated, it shall be the duty of his executors or administrators to carry out his directions.

7. If any person, knowing that he has any pecuniary interest in the death of any other person in terms of any policy of life insurance, or that he is entitled in expectancy of such death to any real or personal property, shall give or join in giving a certificate concerning the death of such person for the purposes of this Act, such first-mentioned person shall be guilty of felony, and may be sentenced to penal servitude for any term not exceeding three years.

Interested persons not to give certificates.

8. The Attorney-General or any special or police magistrate may, in any case, when there shall appear to be reasonable cause for doing so, by order in writing under his hand addressed to the person in charge of any crematorium, forbid the cremation of any human body after death specified in such writing, either absolutely or until the viscera or any other organs have been removed from such body and lodged in such manner and custody as he may require; and if any person in charge of any crematorium shall, in contravention of such order, cremate or permit the cremation of such body, he shall be guilty of a misdemeanour, and may be fined in any sum not exceeding five hundred pounds, or be imprisoned (with or without such fine) for any term not exceeding three years.

Attorney-General may forbid cremation, &c.
Amended by S.L.R. Act, 1936.

9. The body corporate, authority, or persons in whom any cemetery or burial-ground or the control and management thereof is vested for the time being, may consent by their common seal or in writing under their hands and seals to the application for any site for a crematorium made by any person under this Act.

Consent of cemetery authorities to application for a crematorium.

10. The Governor may frame regulations for giving effect to this Act, and such regulations may prescribe penalties for their violation not exceeding ten pounds in any case, and on publication in the *Gazette* shall have the full force of law: Provided that any penalty so prescribed shall be recoverable in a summary way before any two justices or before a special magistrate, but only upon complaint laid with the sanction in writing of the Chairman of the Central Board of Health.

Regulations.
Amended by S.L.R. Act, 1936.

Governor, &c., to approve of by-laws.

11. Before any crematorium is licensed under this Act the scale of fees and by-laws applicable to and to be in force in such crematorium must have been approved of by the Governor; and no alteration in such scale of fees or by-laws shall have any force until so approved of; and no charge for cremation, other than a charge specified in a scale of fees so approved, shall be recoverable in any court.

Regulations.

The following regulations were in force under this Act on 22nd March, 1937:—

Gazette—27th June, 1901, p. 1324.
3rd March, 1904, p. 462.
19th April, 1923, p. 866.
2nd October, 1930, p. 665.

The following regulation relating to fees for cremation permits was in force under the Fees Regulation Act, 1927, on 22nd March, 1937:—

Gazette—24th November, 1927, p. 1229.

CRIMINAL APPEALS

see Criminal Law Consolidation.