Dead Bodies--Disinterment--Damages (Gostkowski v. Roman Catholic Church, 262 N.Y. 320 (1933))

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Dead Bodies—Disinterment—Damages.—Defendant was the owner of a cemetery in which plaintiff had bought a lot so as to bury his deceased wife. Subsequent to the burial, plaintiff discovered that the body had been moved without his knowledge or consent and reinterred, with due care, in a neighboring plot. Upon inquiry as to the cause therefor, the plaintiff, after suffering abuse from the curate, was informed that the wrong plot had been sold to him, having been previously purchased by another. On appeal, from a modified verdict, the next of kin has such rights in the dead body as to entitle him to damages for injured feelings in an action for the disturbance thereof. Gostkowski v. Roman Catholic Church, 262 N. Y. 320, 186 N. E. 798 (1933).

By allowing an action for damages for the wrongful disturbance of a dead body to be maintained by the surviving spouse or the next or kin, the case does not follow the general rule. The holding necessarily recognizes a right of property in the body contrary to the English common law, where it was held that no action could be maintained for property, if any, was not in the heir but, rather, in the Church. The repudiation of the ecclesiastical law, by this country, left our temporal courts the sole protectors of this right and recognition of the change was slow. Thus, the first actions allowed were predicated on trespass quare clausum maintainable by either the next of kin or the owner of the plot. Under this rule, substantial damages are allowed, provided that the trespass is wanton and malicious, in which event the injury to the plaintiff's feelings

2 Gostkowski v. Roman Catholic Church, where, in accordance with the practically universal rule, suit by the son was dismissed on the ground that the action is maintainable only by the surviving spouse or next of kin; Darcy v. Presbyterian Hospital, 202 N. Y. 259, 95 N. E. 249 (1911); Pettigrew v. Pettigrew, 207 Pa. 313, 56 Atl. 878 (1904); 1 Cooley, Torts (3rd ed. 1906) 501; 2 Bl. Comm. 429.
3 Supra note 10.
4 See Pierce v. Proprietors of Swan Point Cemetery, 10 R. I. 227 (1872); 2 Bl. Comm. 429.
5 See In re Brick Presbyterian Church, 3 Edw. Ch. 168 (N. Y. 1838); Pierce v. Proprietors of Swan Point Cemetery, supra note 4; 2 Bl. Comm. 429.
7 Ibid. See also Larson v. Chase, 47 Minn. 307, 50 N. W. 238 (1891).
8 Ibid. See Larson v. Chase, supra note 7.
9 Ibid.
10 Re Beekman Street, 4 Bradf. 503 (N. Y. 1857); Shipman v. Baxter, 21 Ala. 456 (1852); Bessemer Land & Improv. Co. v. Jenkins, 111 Ala. 135, 18 So. 565 (1895); Hamilton v. New Albany, 30 Ind. 482 (1868); Pulifer v. Douglass, 94 Md. 556, 48 Atl. 118 (1901); Partridge v. First Independent Church, 39 Md. 631 (1873); Smith v. Thompson, 55 Md. 5 (1880); Meagher v. Driscoll, supra note 6; Weld v. Walker, 130 Mass. 422 (1881); Thirkfield v. Mountain View Cemetery Assn., 12 Utah 76, 41 Pac. 564 (1895); cf. Bonham v. Loeb, 107 Ala. 604, 18 So. 300 (1895), in which the action for wrongful disturbance was dismissed for lack of ownership of the land by plaintiff.
11 Supra notes 2 and 10.
may be given due consideration. The theory on which this type of action was allowed was first repudiated in Larson v. Chase. At present, the recognition of a quasi-right of property is the practically universal attitude. This right will extend far enough to give a right of action to the next of kin against one who mutilates the body, unlawfully dissects it or interferes with the burial thereof, but wrongful disinterment seems only to give a right of action for trespass quare clausum in the majority of jurisdictions. While there is authority to the effect that pecuniary damages should only be allowed in cases in which there is a mutilation of the body, it would seem that, in the interests of public health and decency, the rule followed is the better one.

W. E. S.

EVIDENCE—BURDEN OF PROOF—DAMAGES FOR WRONGFUL SUSPENSION FROM LABOR UNION.—Plaintiff brought action against a local labor union to have himself reinstated therein, to have declared void the imposition of a fine, and for damages for wrongful suspension. Plaintiff had been a member in good standing when he was wrong-