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EQUITY—DISINTERMENT OF DEAD BODY BURIED IN ANOTHER'S LAND—

Complainant sought a decree in equity compelling defendant, administratrix of the estate of one Abram London, to remove the body of deceased from a grave on land belonging to complainant. Complainant had purchased the land in 1934, but through error of the cemetery officials it was resold to London in 1944. London's wife was buried in the adjacent plot. Defendant contended that the relief requested would transgress London's wish to be buried adjacent to his wife. *Held*, decree granted. The body of a person buried in a grave belonging to another is not properly buried, and the court will direct that the body be removed from such grave. *Glatzer v. Dinerman*, (N.J. 1948) 59 A. (2d) 242.

The jurisdiction of courts of equity in matters concerning the disinterment of dead bodies, while not exclusive,¹ is well established. Historical development is usually regarded as the explanation of this authority, although some equity courts take their jurisdiction in this field for granted.² Early English history shows clearly that the ecclesiastical courts took jurisdiction to the complete exclusion of common law courts. With the fall of these courts in England and the absence of provision for courts of like nature in the United States, it was felt that the power must necessarily be in equity courts.³ A major contributing factor to this conclusion is the proposition of long standing that there is no "property" in a dead body, and, therefore, law can afford no remedy in a case where the removal of a body is sought.⁴ In a few cases equitable jurisdiction is justified on the basis that the

¹ Exhumation of a murdered man's body by order of the trial court for evidentiary purposes was held proper in *Sexson v. Commonwealth*, 239 Ky. 177, 39 S.W. (2d) 229 (1931). When necessary in the determination of heirship, probate courts can order the body of the deceased exhumed for investigation. *Ullendorf v. Brown*, 156 Fla. 655, 24 S. (2d) 37 (1945).

² *Grinan v. Fredericksburg Lodge*, 118 Va. 588, 88 S.E. 79 (1916).

³ *Herzel Congregation v. Robinson*, 142 Wash. 469, 253 P. 654 (1927).

⁴ *Sherrard v. Henry*, 88 W.Va. 315, 106 S.E. 705 (1921). Nearly every case parrots this phrase and then proceeds to recognize various legal interests, usually in the spouse or next of kin, which all but nullify the proposition. See 68 U.S. L. REV. 121 (1934) (that there are "quasi-property" rights, interference with which can be the

charge of a dead body is regarded as a trust.⁵ More difficulty arises in attempting to lay down rules as to when equity will order the disinterment of a dead body. Most of the cases present delicate situations in which strong sentimental, personal, and religious feelings are present. Except for certain broad guides, the decision of each case rests largely upon its facts and the discretion of the court.⁶ Since it is the policy of the law that the sanctity of the grave should be maintained, and that a body once suitably buried should remain undisturbed, a strong showing of necessity and fairness is required before disinterment will be sanctioned.⁷ Courts have taken into consideration some of the following factors: the last wish of deceased as to his final resting place,⁸ the doctrines of deceased's religious faith,⁹ wishes of the surviving spouse and next of kin, rules of the cemetery and the tenets and usages of the religious body conferring the right of burial.¹⁰ In the principal case the only real opposition to the removal of the remains of deceased, which removal was justified because of the interference with complainant's right to exclusive use of the burial lot, was the last wish of deceased to be buried adjacent to his wife. There seems to be ample authority for the decision reached in this case, and it is submitted that most of the courts in the United States today would reach a similar result.¹¹

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subject of suits at law and equity or even criminal prosecution); *Pettigrew v. Pettigrew*, 207 Pa. 313, 56 A. 878 (1904) (that in view of legally recognized rights of custody, control and disposition, it would be accurate to say that law recognizes property in a corpse); *Mensinger v. O'Hara*, 189 Ill. App. 48 (1914) (that an exclusive right, in the category of personal rights, of custody and possession of the remains for purpose of burial exists in the next of kin); *Wilson v. St. Louis and S.F.R. Co.*, 160 Mo. App. 649, 142 S.W. 775 (1912) (that an action lies for injury done to or indignity committed upon the body of a deceased as though property rights existed in it); *O'Donnel v. Slack*, 123 Cal. 285 (1899) (that an individual has sufficient property interests in his own body after death to make valid and binding testamentary disposition of it); *Brownlee v. Pratt*, 77 Ohio App. 533, 68 N.E. (2d) 798 (1946) (granting recovery for mental suffering to next of kin and an injunction restraining further wilful intrusion in sepulchre).

⁵ 25 C.J.S., *Dead Bodies*, § 9.

⁶ See 21 A.L.R. 651 at 653 (1922).

⁷ 25 C.J.S., *Dead Bodies*, § 4.

⁸ *Sacred Heart of Jesus Polish National Catholic Church v. Soklowski*, 159 Minn. 331, 199 N.W. 81 (1924).

⁹ *Radomer Rues-Pol Unterstutzung Verein of Baltimore City v. Posner*, 176 Md. 332, 4 A. (2d) 743 (1939).

¹⁰ The parties in the principal case were all members of a Jewish religious order, and the lot in question was a cemetery maintained by that order. Although the governing Hebraic law upheld complainant's demand, it is to be doubted that the decision would have been otherwise had the religious mandates been the opposite. See *Herzel Congregation v. Robinson*, 142 Wash. 469, 253 P. 654 (1927), where disinterment was decreed in defiance of religious mandates.

¹¹ *Brunton v. Roberts*, 265 Ky. 569, 97 S.W. (2d) 413 (1936). A decree ordering removal of a body, long buried in the wrong lot by mistake, was granted as a matter of course, once the question of adverse possession was settled.