

long line of judicial decisions appear to have established a general doctrine to that effect; but courts of equity have frequently interfered to protect the remains of the dead, and courts of law have also afforded remedies through formal legal actions wherever any element of trespass to property, real or personal, was associated with the molestation of the remains of the dead. In more recent times the obdurate common law rule has been very much relaxed, and changed conditions of society and the necessity for enforcing that protection which is due to the dead have induced courts to re-examine the grounds upon which the common law rule reposed, and have led to modifications of its stringency. The old cases in England were decided when matters of burial and care of the dead were within the jurisdiction of the ecclesiastical courts, and they are no longer absolutely controlling. Thus, in the case of *Pierce v. Proprietors, etc.* (10 R. I. 227), it is stated by the court: "That there is no right of property in a dead body, using the word in its ordinary sense, may well be admitted; yet the burial of the dead is a subject which interests the feelings of mankind to a much greater degree than many matters of actual property. There is a duty imposed by the universal feelings of mankind to be discharged by some one toward the dead—a duty, and we may also say a right, to protect from violation, and a duty on the part of the others to abstain from violation; and it may therefore be considered as a sort of *quasi* property, and it would be discreditable in any system of law not to provide a remedy in such a case." But we are not disposed to put the right of the plaintiff to maintain this action on the ground of a property right in the remains of her husband; nor do we think that the discussion is properly placed when it is rested exclusively upon that proposition. Irrespective of any claim of property, the right which inhered in the plaintiff as the decedent's widow, and in one sense his nearest relative, was a right to the possession of the body for the purpose of burying it; that is, to perform a duty which the law required some one to perform and which it was her right by reason of her relationship to the decedent to perform. That right of possession is a clear legal right, and, to use the language of Mr. Ruggles in his valuable report adopted by the court in the *Brick Church case* (4 Bradford's Surrogate's Reports), "the right to bury a corpse and to preserve its remains is a legal right which the courts of law will recognize and protect." The right is to the possession