

valuable improvements in the property, "but went on to say that it would be offensive to the moral sense, and therefore should not be sanctioned by the court, after these bodies had there been buried, to permit the property to be made the subject of speculative disposition, with permission to the purchaser to remove them from their resting place. Such an interference with dust and ashes was not sanctioned by the common law" (*King v. Lyon*, 2 T.R., 733; *Com v. Cooley*, 10 Pick., 37).

Andrew J. Thompson was mean enough to borrow money from William Hickey upon his lot in Greenwood Cemetery, and then bring an action to have the conveyance given in consideration declared void, and to restrain the removal of the bodies of his children buried therein. The court was with him. Van Vorst, J., said that a lot purchased for a burial plot, in which interments had been made, is in such a condition that it cannot be mortgaged to secure the payment of a debt or the return of money borrowed, and that apart from legislative enactment. The conveyance to Hickey and subsequent transfers were declared void, and ordered to be delivered up to be cancelled. The Judge remarked, "the sentiments and feelings which people in a Christian State have for the dead, the law regards and respects, and however it may have been anterior to our legislation on the subject of cemeteries, the dead themselves now have rights, which are committed to the living to protect, and in doing which they obtain security for the undisturbed rest of their own remains. In any view which may be taken of this subject, I am sure," said the Judge, "that the defendants should be restrained from interfering with the children's graves. If the conveyance executed by the plaintiff to Hickey is supposed to confer any present right, it must yield to the easement of the bodies already buried there, which should in no event be disturbed" (59 How. (N.Y.) Pr. 434; see also *Moreland v. Richardson*, 22 Beav., 596; 24 *ib.*, 33; *First Presbyterian Church v. Second Presbyterian Church*, 2 Brewst (Pa.), 372.)

It appears, however, if the burial lot is unused, a sale, or conveyance, or mortgage may be good, for it would not be against good morals, public policy, or the spirit of the statute (*Lantz v. Buckingham*, 4 Lans., 484). Of course in Ontario the statute clearly forbids mortgaging burial lots in public cemeteries (*vide supra*), but does not refer to ordinary grave-yard lots.

A man seems more likely to find his grave his final resting-place if it is in a public cemetery than if it is in a churchyard. A New York Judge said that every person purchasing a grave in a churchyard does so with the full knowledge and implied understanding that change of circumstances may in time require a change of location (*Richards v. N. W. Protestant Dutch Church*, 32 Barb., 42). If a burial ground is expropriated in New York, the relatives of the dead are entitled to be indemnified against the expense of removing and suitably re-burying the remains (4 Bradf., 502). In the parish churchyards in England, corpses are expected to remain *in statu quo* only a reasonable time; the corpse—the cadaver (i.e., *caro data vermibus*)—of to-day must allow itself to be removed by the worms, so as to let the corpse of next year have a resting-place. This seems to be the meaning of *King v. Coleridge*, (2 B. & Ald., 806). There, in a parish of