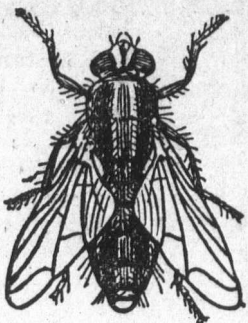


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A Judge Recalled

The Result of a Friendly Suit in Court

By F. A. MITCHEL

George Jernegan, a student of medicine at a southern university, having reached that stage of his studies (anatomy) wherein he needed to dissect human bodies in order to see for himself the muscles, arteries, bones and other parts that constitute the machine, man, found to his discomfort that the university authorities were unable to provide him with a subject. Not willing that his career as a sawbones should be nipped in the bud on this account, he resorted to a method which was once much in vogue among medical students, but which is now considered to be obsolete—he robbed a grave.

A young man named Blackiston had distinguished himself as a law student. It was considered that the day would come when he would make a second Daniel Webster. But, whether he studied too hard or his precociousness meant a disordered brain, he went the way of most prodigies—he broke down. One day he was found with his head on a pile of lawbooks unconscious. Doctors were called in who prescribed all sorts of treatment, from hot water at the feet to a bath in ice water, without restoring the patient. He remained in a comatose condition for many days, the action of the heart apparently growing weaker each day till at last the physicians in attendance could not detect even a flutter. So he was pronounced dead, was buried, and the legal world regretted that the profession had lost a coming shining light.

Now, Jernegan was looking for a subject about the time that Blackiston was buried. The night after the funeral the former went to the cemetery, dug up the corpse and, putting it in a gunny bag, carried it to the dissecting room. Fearing that if left as it was it would be recognized, he con-



cluded to cut it up before morning; but, being tired with the work he had done, he went to a saloon near by with a small pitcher and returned with it full of beer, besides pretzels. These he placed on a table beside the corpse and, noticing that his tobacco pouch was empty, went out again for tobacco. When he returned this second time and entered the dissecting room he was paralyzed with astonishment. The corpse was munching a pretzel and was just reaching out for the pitcher of beer.

So long was the draft (a man who has been several hours under cold ground certainly needs all the stimulant he can get) that Jernegan, fearing there would be none left for himself, called a halt. The corpse paid no attention to the interruption, continuing to drink till the last drop was exhausted, then got back on the dissecting table and closed his eyes. Jernegan to determine the fact of life or death pricked the corpse's cheek with the point of a knife, knowing that if the subject was dead no blood would flow. A red drop stood on the cheek. The subject opened his eyes and, seeing a man standing over him, asked where he was.

Jernegan told him that he was supposed to be dead, had been buried, resurrected and had not revived would soon have been cut up in a dissecting room.

The vigor of Blackiston's mind seemed to have been at least in a measure restored and went right on in the vein that had been interrupted by his stroke or whatever it was.

"You're a body snatcher," he said.

"Lucky for you that I am. If I hadn't resurrected you you'd have died a horrible death."

"That may be, but I wonder if I have not cause for an action against you?"

"Action for what?"

"I'm not sure whether it would come under the law against body snatching, trespass or disturbing my repose."

"Disturbing your repose? Well, I like that!"

"There is another point of law involved. A certificate of my death has doubtless been made out by the doctors, and in the eye of the law I'm a dead man."

"You came very near being a dead man in the eye of the medical profession."

"The case interests me. I am sensible of the obligation I am under to you for saving my life, but you wouldn't mind my bringing a friendly suit against you to try this singular case, would you?"

"Not a bit, if you'll pay all the costs."

"I'll do that."

Mr. Blackiston got down from the dissecting table and tried to walk, but failed. He sat down and asked Jernegan if he would kindly call a carriage. When it arrived Jernegan attended him to his home.

Blackiston sued Jernegan for trespassing upon his grave. The case excited so much attention among the members of the legal profession that the bar association volunteered to furnish counsel for Jernegan's defense and retained their most brilliant member for the purpose. Blackiston conducted his own case.

"Your honor," he said in his opening remarks, "I shall proceed to show by competent witnesses that the defendant did with malice aforethought invade and trespass upon my grave, interfere with my repose, feloniously steal my body, place it in a bag and carry it to a dissecting room. He then and there was making preparations to take apart my members for the purpose of study when I returned to consciousness. This suit is brought with a desire to learn the legal status of a corpse. It is a principle of common law that there are no property rights in a dead body. No one owns it but itself. That it has legal rights has been established in the case of the estate of Swiback versus Oppenheim, wherein it was decided that the body of Swiback was a part of his estate, in which he had the same interest as in his real estate."

"Your honor," replied counsel for defense, "this being a friendly suit to establish a principle we admit without the fact being established by witnesses that the defendant did remove the body of the plaintiff from its grave, but we claim that the plaintiff, being legally dead, has no standing in this court."

"I propose," said Blackiston, "to try the case on that very issue. I therefore admit that in the eyes of the law I am dead. Nevertheless in a sense a corpse is a living person. It being the duty of the state under the law to protect the repose of the dead, it follows that the dead have rights. Therefore when a corpse is feloniously invaded in its own domicile, the grave, it must have a legal standing with the state to protect itself. If it has a legal standing against the state it must have such standing in court against an individual."

"There is no question," replied counsel for the defendant, "that the plaintiff is legally dead, nor is there any question that he is really living. Nevertheless I am considering him as a corpse resurrected, returned to life and with the right to establish his former legal identity. Since we are endeavoring to establish a principle of law, let us admit that Blackiston has established such legal identity. In that case I think he would stand before the court as a resurrected living corpse, which, as was held in the case of Brickbat versus Cobbleston—"

At this point the court interrupted the learned counsel to say that the brain wear and tear of the case were so exhausting that he would adjourn the court for one hour for refreshment, recommending phosphoric foods calculated to restore the enormous cellular waste. When the court convened again his honor remarked:

"In order to proceed with this trial it must be admitted that the plaintiff has a standing in this court, and so the court holds."

"Very well," said Blackiston. "My standing before this court as a corpse having been admitted, I demand damages against the plaintiff for invading the six feet of ground in which I as a dead man had an inalienable right."

"Your honor," quickly interposed counsel for the defense, "the plaintiff cannot claim damages, though his standing in court and the trespass is admitted, for since there is no property right in a corpse the law does not give a right to recover in a court for a violation of sepulture. If we admit that the plaintiff suing as a corpse has cause for action against a man for stealing himself—a corpse—the present action falls to the ground and can only be brought again as an action of a dead body against another, for

which there is no law of the land that can compel an answer."

Blackiston now arose and delivered an argument that has since been considered a wonder by every member of the bar who heard it. But unfortunately the reporters, who were not skilled in legal lore and could not digest the arguments, had been sinking to slumber, and when the phenomenon arose to speak the last journalist had gone to sleep.

When the summing up had been concluded the judge announced that he would take a week to consider the case and would hand down a decision at the end of that period.

When the day came for him to read his decision the courtroom was crowded to overflowing. The judge looked ten years older than before the trial. He began to speak in a feeble voice, but gained strength as he proceeded. The lawyers and spectators listened patiently though eagerly till the gist of the opinion came in the last few words, "There is nothing in the constitution to enable a dead man to bring an action in a living court."

A mighty shout of "Recall him! Recall the stupid blunderer!" arose. And straightway those adverse to the opinion proceeded to unseat the judge.

The movement was successful, but the poor man died on the very day he was unseated.

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