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desecration of the grave. If I had been applied to before the removal of the body, I would have interfered. But this is not the case here. The city claims as the residuary legatee and her motive was to indicate respect and honor for the memory of the man. If the executors chose to disclaim it they might have done so, if they were executors, but if they disclaimed, the relatives might be parties alone. In all these aspects a court of equity might interfere. But the body has been removed and the relatives had a knowledge of it. Even here the court can interfere; but ordering the body back to its former place would be deciding the case; we are not asked to do this now. It would be deciding the case before a hearing."

The court then ordered that the body be placed in the sarcophagus at Girard College, as the most convenient temporary abode, until its final resting-place should be determined at the final hearing.

In this case the English doctrine, as set forth by Blackstone, was cited by eminent counsel as the law in Pennsylvania; but, as it appears above, the court did not find it necessary to decide the point. A case arising soon after this in New York received very full consideration at the hands of Samuel B. Ruggles, in a report to the Supreme Court, as referee "in the matter of widening Beekman street," in the city of New York. In that case it appeared that the commissioners of estimates, &c., had paid into court the sum of \$28,000, as damages for certain land taken in widening that street. The land taken belonged to the Brick Presbyterian Church, and contained "vaults for the burial of the dead in which various individuals claimed the rights of interment, and the use thereof for the funeral of the dead." One Sherwood had been interred in this lot in 1801 and his remains had rested there quietly ever since. His descendants claimed that the expense of re-interring them in such suitable place as they might select, and of erecting the monument that had always stood over them, should be paid out of this fund. It did not appear that any burial-fee had ever been paid to the church for permitting the body to be buried there. The referee was of opinion that the use of this cemetery was a charitable as well as a religious use, a trust which a court of equity in the exercise of its undisputed equity powers might duly control and regulate; * * * that it was proper to retain from the fund a sum sufficient to cover the expense of re-interring the remains of Moses Sherwood in a separate ground in such reasonable locality "as his descendants might select." In

his report, the referee drew "the following conclusions, as justly deducible from the fact that no ecclesiastical element exists in the jurisprudence" of New York.

"1. That neither a corpse, nor its burial, is legally subject, in any way, to ecclesiastical cognisance, nor to sacerdotal power of any kind.

"2. That the right to bury a corpse and to preserve its remains, is a legal right, which the courts of law will recognise and protect.

"3. That such right, in the absence of any testamentary disposition, belongs exclusively to the next of kin.

"4. That the right to protect the remains includes the right to preserve them by separate burial, to select the place of sepulture, and to change it at pleasure.

"5. That if the place of burial be taken for public use, the next of kin may claim to be indemnified for the expense of removing and suitably re-interring their remains."

The Supreme Court, at a special term in 1856, confirmed this report in all respects and decreed accordingly; and also directed the church to re-inter separately the remains found in any other of the graves whenever identified by the next of kin. See 4 Bradf. (Appendix) 502.

This case contains a very full exposition of the law of burial, and has been cited with approbation by the courts of other states.

In *Wynkoop v. Wynkoop*, 6 Wright 293, the case was this: Col. Wynkoop died in 1857, and was buried with military honors at Pottsville, in a lot belonging to his mother. Within a year his widow, who was also his administratrix, endeavored to remove his remains, but was refused permission by the owners of the cemetery and by her husband's next of kin. She thereupon filed a bill for an injunction restraining the defendants (the owners of the cemetery, the owner of the lot and her husband's next of kin) from interfering with the removal. The court, in dismissing the bill, held, that as administratrix the complainant's duty to bury terminated with the burial, and that as widow, "she would appear in that case to have no rights after the interment." The court further said, "that the fact that the body deposited in his mother's burial-place in consecrated ground, and that he was buried with the ceremonies of the church and the honors of war, was sufficient to justify a court of equity in refusing permission to a removal under the circumstances." This decision cannot be extended beyond the particular state of facts upon which it was based. It appears that the lot was owned by the mother of the deceased, and that he had been buried there