

proceeds to state matter intended to be in aggravation of damages, and ends with a demand for a money judgment.

The learned judge who decided this demurrer at the Special Term has given no statement of the views which prompted his decision, and we are therefore without the advantage of a preliminary judicial examination of the question involved; but we have reached the conclusion that the court below was right in overruling the demurrer on the case as it is stated in the pleading.

The allegations of the complaint clearly establish an unlawful act on the part of the defendant. The unauthorized dissection of human remains is a misdemeanor, under the provisions of sections 308 and 309 of the Penal Code of this State. While it is true that the provisions of the criminal law neither give nor recognize a right to institute a civil suit for damages, still they incontestably determine the wrongful nature of the act complained of. There is a statute specially applicable to the case of a patient who dies, as this plaintiff's husband did, in one of the hospitals of the State. The act of 1854 (chapter 123), well known as the act to promote medical science, expressly prohibits the dissection of a dead body or its delivery to any one for the purposes of dissection, if the relatives or friends of the deceased object, or if they make application within a certain time (as appears to have been done in this case) for the remains for the purposes of burial.

At the outset of the inquiry, the objection is taken to the maintenance of the action; that, assuming for the purposes of the argument a civil action will lie, the plaintiff has no standing in court to maintain it. This objection proceeds upon the idea that if any one may bring an action of this character, it must be the next of kin. It has been stated in general terms in several cases, that, in the absence of testamentary direction on the part of the deceased, the exclusive right of burial and of designating the place in which human remains shall be interred, is with the next of kin. Those cases are referred to and cited in an opinion of Mr. Justice Landon in the case of *Snyder v. Snyder* (60 How. Pr. 370,) and in commenting upon them that learned judge says: "Most of the cases there referred to arise with respect to the right to protect the place where the remains were buried; to prevent a disinterment, or to collect from the executors, or relatives of the deceased, the expenses of the funeral. In the absence