THE

LEGAL NEWS.

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CURRENT TOPICS AND CASES.

The Hon. Mr. Justice Baby, who, on the 28th April, 1881, was appointed to the then newly created sixth judgeship of the Court of Queen's Bench of this province, has retired after completing fifteen years' judicial service, and the Hon. J. A. Ouimet, Q. C., recently Minister of Public Works in the Dominion Government, has been appointed to the vacant position. The Bar will regret that the cause of Mr Justice Baby's resignation should have been somewhat increased delicacy of health, and will unite in the hope that release from the burden of official duty may speedily restore to the learned judge his wonted energy. Mr. Justice Baby has long taken an active part in the labours of the Antiquarian Society, and has contributed greatly to stir up an interest in this somewhat neglected subject. In the leisure afforded by his retirement His Honour will doubtless continue to lend his valuable aid to this as well as other movements of public importance.

His successor, the Hon. Mr. Ouimet, Q. C., was born in 1848, and enters upon his new duties at the comparatively early age of 48 years. He was called to the bar

in 1870, and appointed a Q.C. in 1880. Mr. Justice Ouimet, like many of his colleagues on the bench, has been actively engaged in public life for many years. He was first returned to Parliament for Laval, his native county, in 1873, and has represented the same constituency in the Commons ever since. From 1887 to 1891, he filled with distinction the important position of Speaker of the House of Commons. In the following year he entered the cabinet, assuming the portfolio of Minister of Public Works, which he retained until the reconstruction of the ministry under the present leadership of Sir Charles Tupper. Judge Ouimet was for some years Crown Prosecutor in the district of Montreal, and in this as well as in the many other positions he has filled—as Speaker, Minister, Colonel of the 65th battalion, and sundry lesser offices, he has always evinced tact, energy, and capacity. Like his predecessor Mr. Justice Baby, he has ever been distinguished by unfailing courtesy and good nature, and these are qualities which shine on the Bench and are appreciated by the Bar.

The retirement of Mr. Justice Fournier from the bench of the Supreme Court is comparatively an event of yesterday, it being noticed in our issue of the 15th September last, when he was replaced by Mr. Justice Girouard. It is with regret that we have now to record his death which occurred on the 8th instant. The deceased was born in 1824, and called to the Bar in 1846. In 1874 he was appointed Minister of Justice of Canada. In the following year he retired from the Government in order to accept the office of a puisne judge of the Supreme Court of Canada, then created by statute.

In the reconstruction of the Quebec ministry, necessitated by the acceptance of office in the Dominion cabinet by the Hon. Mr. Taillon, ex-premier, the Hon. E. J. Flynn, Q.C., becomes premier, and Mr. A. W.

Atwater, of the Montreal bar, has been sworn in as treasurer. The latter gentleman is new to public office, but he is well known as a distinguished member of the junior bar, and his advent to office has been hailed with satisfaction by the leading men of both political parties.

A very graceful tribute was paid to the memory of the late Mr. L. W. Marchand, Q.C., by the Chief Justice, Sir Alexander Lacoste, at the opening of the May term of the Court of Appeal in Montreal. The eulogistic terms in which the Chief Justice referred to the ability, diligence and devotion displayed by the gentleman who so long sat under the bench, were no ordinary phrases of compliment, and the feeling and sympathetic manner in which allusion was made to the higher qualities of the deceased as a man and a citizen showed how deeply his worth was appreciated and his death lamented by his official superiors.

At the time we write the office of Clerk of the Court has not been filled, and we have heard an intimation that it will not be filled until after the long vacation. We see no reason for the delay, as such vacancies should be promptly filled, but however this may be, we trust that the just claims of Mr. Louis Ouimet to the position will not by any chance or political change be disregarded. Mr. Ouimet has been in the office for twenty-eight years, and during a large part of this time has been deputy Clerk, taking the duties of Clerk in the occasional absence of Mr. Marchand. He is a popular and efficient officer, and the case is one where the principle of promotion should be adhered to. The next in seniority to Mr. Ouimet is Mr. Louis Marchand, a nephew of the deceased gentleman, who is thoroughly qualified for the position of deputy Clerk, and such an arrangement of the duties of the Appeal office would, we believe, give general satisfaction.

In *Gross* v. *Electric Traction Co.*, decided in Pennsylvania, 23 April, 1896, under a law similar to Art. 1056 of our Civil Code, an action was brought by a widow for damages caused by the negligence of the company defendant, which resulted in the death of her husband. A peculiar feature of the case was that although the plaintiff and the deceased had been living together for seven years they were only married after the accident and a few days before the husband's death. It did not appear whether the marriage ceremony had been performed to enable the widow to bring her suit against the defendant, or whether the object was to give legal sanction to the union which had previously existed. But it was urged by the company that under the circumstances the plaintiff could not recover. The jury found the fact of negligence, and fixed the damages, and the Court of Common Pleas did not disturb the findings. It would not be difficult, however, to imagine a case in which such a marriage would assume the form of a speculation, and even if the action were maintainable, the damages in such a case might fairly be placed at one cent,—for example where a marriage ceremony was performed obviously with the sole object of enabling an action to be instituted.

NEW PUBLICATIONS.

Banks and Banking.—The Bank Act, Canada, with notes, authorities and decisions, and the law relating to Warehouse Receipts, Bills of Lading, etc., by J. J. Maclaren, Esq., Q.C., D.C.L., LL.D. Publishers: The Carswell Co., Toronto.

Mr. Maclaren, Q.C., the author of the well known and valuable treatise on Bills and Notes—a work which has already reached a second edition—has now taken up the kindred subject of Banks and Banking. The banking system of Canada differs considerably from that of England, and still more widely from that of the United States The decisions of our own courts, therefore, deserve special attention in so far as they touch this branch of

law. The present work is preceded by an interesting introduction on Banking in Canada, written by Mr. B. E. Walker, General Manager of the Canadian Bank of Commerce. Eight or nine hundred decisions are cited by Mr. Maclaren, and the text is written with his usual attention to accuracy of statement and lucidity of arrangement. It may be added that the work includes the Savings Bank Act, the Winding-up Act, and some extracts from the Criminal Code, 1892, with notes of decisions thereon. The whole forms a volume of about 400 pages, which must prove useful to a much wider circle than the bench and bar, and we have no doubt that it will soon come into general circulation.

HANDY GUIDE TO PATENT LAW AND PRACTICE, by G. F. Emery, Esq., LL.M., of the Inner Temple, barrister-at-law. Publisher, Effingham Wilson, 11 Royal Exchange, London.

Mr. Emery's work is not very extensive in bulk, but the art of compression seems to have been skilfully exercised by the author, and the necessary information is fully and clearly stated. The subjects dealt with are, first, everything relating to the Patent Office, and those matters in which a solicitor is not usually employed; and secondly, the various forms of legal proceedings connected with patents in which the services of a solicitor are but rarely dispensed with. The decisions referred to in matters where the law of England is similar to our own, will be found useful and convenient, and it may be added that the price of the work is extremely moderate.

POLITICAL APPOINTMENTS.—Parliaments and the Judicial Bench in the Dominion of Canada, 1867 to 1895. Edited by N. Omer Coté, Esq. Publishers, Thoburn & Co., Ottawa.

This is a work which evinces marvellous industry and research on the part of the author, and, to add to its value, the information has been drawn from authentic sources. The present compilation is a sequel to a similar work published by Mr. Coté's father, the late Mr. J. O. Coté, N.P., formerly Clerk of the Privy Council for Canada, under the title of "Political Appointments and Elections in the Province of Canada, 1841 to 1865." A second edition of the last mentioned work has now been issued. The two works taken together exhibit the appointments

for 54 years, and a very cursory examination of the volumes is sufficient to show the painstaking research which has been necessary in their preparation. To editors they will be especially useful. All dates of appointments of Judges, Queen's Counsel, etc., are included. The record is both interesting and valuable. We shall probably have occasion to recur to some of the interesting features of this work.

SUPREME COURT OF CANADA.

OTTAWA, 6 May, 1896.

Quebec.]

LACHANCE v. LA SOCIÉTÉ DE PRÊTS ET DE PLACEMENTS DE QUÉBEC.

Appeal—Amount in controversy.

L., a creditor of an insolvent firm in the sum of $525, contested the claim of another creditor on the ground that a hypothec held by the latter on the insolvent's property was null, and that the amount thereof, $2,044, should belong to the estate for collocation among all the creditors. The contestation was unsuccessful, and L. sought to appeal to the Supreme Court from the judgment of the Court of Queen's Bench, by which it was dismissed. The respondents moved to quash the appeal.

Held, that to determine the amount in controversy necessary to entitle L. to an appeal, only his own pecuniary interest could be looked at, and that being less than $2,000, the appeal would not lie; the fact that the contestation, if successful, would give the estate the benefit of more than $2,000 did not give the court jurisdiction.

Appeal quashed with costs.

Turcotte, for the motion.
Geoffrion, Q.C., contra.

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24 March, 1896.

Ontario.]

MARTIN v. HAUBNER.

Statute of Frauds—Memorandum in writing—Repudiation of contract.

In an action for the price of goods sold through an agent the alleged purchaser denied the agency and claimed that the goods

had never been delivered. In answer to this last contention, the following letter was relied on as constituting a memorandum in writing sufficient to satisfy the Statute of Frauds :—

" Toronto, 13th September, 1894.

" L. D. Haubner Esq.

" Dear Sir,—In reply to yours of the 5th inst., I have to say that Mr. Silberstein had only limited instructions to buy certain goods and to a certain amount only. Your draft has not been presented and cannot be accepted, as I do not want the goods purchased by Silberstein, and they are of no use to me. I am advised that the goods are here, but have not interfered with them, and they are subject to your order so far as I am concerned. The goods shown by your invoice are not what I wanted, and the amount is far in excess of the value of the goods I did want.

Yours truly,

John M. Martin.

Held, affirming the decision of the Court of Appeal (22 Ont. App. R. 468), that the invoice referred to in the letter could be identified by evidence, and as the writing contained a statement of all the terms requisite to constitute a memorandum of the contract under the statute it could be used for that purpose, notwithstanding it repudiated the sale.

Appeal dismissed with costs.

Robinson, Q.C., and *Macdonald*, for the appellant.

S. H. Blake, Q.C., and *W. Cassels, Q.C.*, for the respondents.

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24 March, 1896.

Ontario.]

Wilson v. The Land Security Co.

Vendor and purchaser—Agreement for sale of land—Assignment by vendee—Principal and surety—Deviation from terms of agreement—Giving time—Creditor depriving surety of rights—Secret dealings with principal—Release of lands—Arrears of interest—Novation—Discharge of surety.

An agreement for the purchase and sale of certain specified lots of land in consideration of a price payable partly in cash and partly by deferred instalments on dates therein specified,

was subject to payments being made in advance of these dates under a proviso that "The company will discharge any of said lots on payment of the proportion of the purchase price applicable on each."

The vendee assigned all his interest in the agreement to a third party by a written assignment registered in the vendor's office, and at the time there were several conversations between the three parties as to the substitution of the assignee as purchaser of the lots in the place of the original vendee. The vendors afterwards accepted from the assignee, several payments upon interest and on account of the principal remaining due from time to time as lots and parts of lots were sold by him, and without the knowledge of the vendee arranged a schedule apportioning the amounts of payments to be made for releases of lots sold, based on their supposed values, and in fact released lots and parts of lots so sold, and conveyed them to sub-purchasers upon payments according to this schedule, and not in the ratio of the full number of lots to the unpaid balance of the price, and without payment of all interest owing at the time sales were made. The vendors charged the assignee with and accepted from him compound interest, and also allowed the assignee an extension of time for the payment of certain interest overdue, and thus dealt with him in respect to the property in a manner different from the provisions of the agreement in reference to the conveyance of lots to sub-purchasers.

Held, that the dealings between the vendor and the assignee did not effect a novation by the substitution of him as debtor in the place of the original vendee, or release the vendee from liability under the original agreement.

That notice to the vendors of the assignment and their knowledge that the vendee held the land as security for the performance of the assignee's obligations towards him, bound the vendors so to deal with the property as not to affect its value injuriously or impede him in having recourse to it as a security.

In a suit taken by the vendor against the vendee to recover interest overdue, equitable considerations would seem to be satisfied by treating the company as having got from the third party on every release of a part of a lot, the full amount that they ought to have got from him on a release of an entire lot and as having received on each transfer all arrears of interest.

In the absence of any sure indication in the agreement the ratio of apportionment of payments for the release of lots sold should be established by adopting the simple arithmetical rule of dividing the amount of the deferred instalments stated in the agreement by the total number of lots mentioned therein.

Appeal dismissed with costs.

Geo. Kerr and *Rowell*, for appellant.

Kerr, Q.C., for the respondents.

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24 March, 1896.

Manitoba.]

NORTHERN PACIFIC EXPRESS CO. v. MARTIN.

Bailee—Express company—Receipt for parcel—Condition — Compliance with—Pleading—" Never indebted "—Plea of non-performance.

M., sending a money parcel by express, received a receipt in a "money receipt book" which contained a provision that the money would be forwarded "subject to the printed conditions on inside front cover of this book," and one of such conditions was that the company would not be liable for any claim "unless such claim is presented in writing within sixty days from the date of loss or damage in a statement to which a copy of this contract shall be annexed." The parcel was not delivered, and M. presented his claim in writing but no copy of the contract was annexed.

Held, reversing the decision of the Court of Queen's Bench, Manitoba (10 Man. L. R. 595), that M. must be held to a strict compliance with the conditions of his contract with the company, and his claim was barred for want of notice.

M. brought an action for money had and received to recover the value of the parcel.

Held, that the company was not obliged to plead non-performance of the condition in answer to this action, as all necessary proof could be made under the plea of "never indebted."

Appeal allowed with costs.

McCarthy, Q.C., for appellants.

Ewart, Q.C., for respondent.

24 March, 1896.

British Columbia.]

THE WILLIAM HAMILTON MANUFACTURING CO. v. THE VICTORIA LUMBER & MANUFACTURING CO.

Negligence—Construction of boiler—Defect in—Expert evidence—Questions of fact—Concurrent findings of courts below.

A lumber company gave a verbal order for the construction of a boiler for a steam tug to the W. H. Manufacturing company, accompanying such order with a sketch or plan, but without any specifications or details other than those on the plan itself which was prepared by the engineer of the tug. The boiler was made and delivered to the lumber company, who placed it in the tug. It was not built according to the plan submitted, but was certified under the Steamboat Inspection Act as properly built and showing a capacity to stand a working pressure of 128 lbs. to the square inch. After being in use for six months it sprung a leak, and the manufacturing company having sued for the price, the lumber company counter-claimed for damages in consequence of defective construction.

On the trial it was proved that no boilers were built according to the plan of the engineer; that if so built it would only stand a pressure of some 18 lbs.; and that all the great ocean steamships had boilers of the design of the one in question. The engineer who had prepared the plan agreed with the other evidence as to the ocean steamers, but gave as his opinion that in one particular the boiler in question was defective and that such defect caused the leak. The government boiler inspector at Victoria, B. C., concurred in this opinion, and the court below gave damages for the lumber company on their counter-claim, affirming the judgment of the trial judge but increasing the amount.

Held, reversing the decision of the Supreme Court of British Columbia (4 B. C. Rep. 101) that the evidence did not justify the judgment for the lumber company; that the experts on whose testimony the judgment was founded were not present at the time of the accident, and the evidence they gave was not founded on knowledge, but was mere matter of opinion and no reasons were given, nor facts stated, to show on what their opinion was based; that it was mere conjecture which should

not be allowed to dispose of the case in hand and still less to condemn, as defective in design and faulty in construction, boilers in general use all over the world; and that such judgment should not be allowed to stand notwithstanding the concurrent findings of the two courts on a matter to be decided by evidence.

Appeal allowed with costs.

Aylesworth, Q.C., and *Dumble*, for the appellants.

Robinson, Q.C., for the respondents.

MALICIOUS EXERCISE OF A LEGAL RIGHT.

The judgment of the House of Lords in *Corporation of Bradford* v. *Pickles*, settles that the malicious exercise of a legal right constitutes in English law no cause of action. The notion that it might be actionable is founded on a passage in the Digest, 39, 3, *De Aqua et Aquæ Pluviæ Arcendæ*, 1 Ulp. 12, where Marcellus is quoted as saying that to dig in one's own land, and so cut off the supply of water from a neighbour's well, is not actionable unless done "*animo vicini nocendi.*" In *Chasemore* v. *Richards*, 7 H. L. Cas. 249, Lord Wensleydale stated, on the authority of a passage in Bell's Principles (s. 966) that the same rule applies in the law of Scotland, though this was questioned by Lord Watson in *Corporation of Bradford* v. *Pickles*. In principle there is much to recommend the notion (*cf.* Pollock on Torts, 4th ed., p. 144). In the present case the plaintiffs were the owners of the Bradford Waterworks. The defendant was the owner of land adjacent to the Many Wells Springs, one of the sources from which the town was served. The water supplying the springs percolated through his land in undefined channels, and consequently, on the principle of *Chasemore* v. *Richards*, he was entitled to divert it. He announced to the corporation his intention of executing drainage works on the land which would have the effect of diverting the water, alleging that he was desirous of working the stone under the land. North, J., found as a fact (42 W. R. 697) that his actual motive was to carry off the plaintiffs' water supply, with the ultimate purpose of compelling them to buy him off. But if this was so, it would bring his conduct within the legal meaning of malice. In the language of Lord Esher in *Bowen* v. *Hall*, 6 Q. B. D., at page 338, he would have threatened to use his land for the indirect purpose of

injuring the plaintiffs, or of benefiting himself at the expense of the plaintiffs, and such conduct would be restrainable by injunction—this was the object of the action in question—if legal malice render actionable the otherwise lawful exercise of a right of property. No precedent, however, exists for such restriction of the rights of owners, and the House of Lords, affirming the decision of the Court of Appeals and (on this point) of North, J., have declined to make one.—*Solicitors' Journal.*

UNLAWFUL DISSECTION.

In the case of *Foley* v. *Phelps*, Judge Patterson, in the Appellate Division, New York, has held that a wife may recover damages for the unlawful dissection of the body of her husband. The following is the substance of the opinion delivered by the Court:—

The question presented in this case seems to be one of first impression in this jurisdiction, and comes before the court on appeal from a judgment over-ruling a demurrer to the complaint. Stated with precision the inquiry is, whether the defendant is liable *civiliter*, and to this particular plaintiff, for the unlawful dissection of the remains of her husband—an act not only unlawful, but constituting, on the assumption that the facts alleged are true, a criminal offence. The complaint sets forth that on the 16th of May, 1894, the plaintiff's husband fell through an elevator shaft in a building in the city of New York, and was taken in an unconscious condition to the Bellevue hospital, where he died three hours after his admission; that the plaintiff was a loving and devoted wife, and was under the duty and obligation and had the right of burying her husband; that she applied at the hospital for his body, and begged and implored those who were in charge of it not to allow or permit an autopsy to be performed, and gave notice that she would immediately send an undertaker for the body to remove it to her home, where it would be prepared for burial; that notwithstanding her request and protestations, the defendant, without her knowledge or consent, procured, assisted, aided and abetted in performing an autopsy on her husband's body, which autopsy was performed without any authority of law, and was wilfully done by cutting open and otherwise abusing and maltreating the dead body. The complaint then

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

of a contention prior to burial, as to the right between relatives to designate the place of burial, the broad doctrine that the right rests exclusively with the next of kin, can hardly be construed as a judicial exclusion of the right of the widow." In this case it will be observed that the question is directly presented with reference to the duty and right the widow owes and has to and over the body of her dead husband *prior to interment*—that is, before the remains have passed beyond the necessity of human care and attention: It is provided by the Penal Code of this State that, except in cases specially provided for by law, the dead body of a human being lying within this State must be decently buried within a reasonable time after death. The duty must be performed by somebody. It has been held in this country that the primary duty of burying a deceased wife is upon the husband. (*Weld* v. *Walker*, 130 Mass. 423). And it has been expressly determined that if a husband and wife are living together at the time of the death of the former, the widow's right to the possession of the dead body, for the purposes of preservation and burial, is a right in the widow paramount to that of the next of kin. (*Larson* v. *Chase*, 47 Min. 307). We think, therefore, as a matter of law upon the facts as they are stated in this complaint, and without reference to the allegation of the plaintiff's duty and right, she may maintain this action, if it may be maintained at all. The foregoing observations are made to meet the possible suggestion that the allegation of the complaint respecting the duty and right referred to is merely one of a conclusion of law, and of course, if it is such, it is not admitted by the demurrer. But construing the words of the complaint with reference to this matter as we think they should be construed, they are equivalent to an allegation that, as a matter of fact, the plaintiff was the person upon whom had devolved the obligation and responsibility of complying with that requirement of the law respecting the interment of human remains, to which reference has been made, and that the demurrer admits that she was such person.

This brings us to the consideration of the other question involved, namely, that concerning the right to maintain an action at all. The ground of objection urged by the appellant is that there can be no such action because there can be no such thing as property in human remains. By the common law and *stricti juris*, the proposition as to property may be maintainable. A

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

of the corpse in the same condition it was in when death supervened. It is the right to what remains when the breath leaves the body, and not merely to such a hacked, hewed and mutilated corpse as some stranger, an offender against the criminal law, may choose to turn over to an afflicted relative. If this right exists, as we think it clearly does, the invasion or violation of it furnishes a ground for a civil action for damages. It is not a mere idle utterance, but a substantial legal principle, that wherever a real right is violated a real remedy is afforded by the law. A right to vote can in no sense be called a pure right of property —it is merely a personal right; yet who would now contend that a person obstructing a voter's right or preventing his voting would not be, irrespective of any statutory enactment, liable even if the candidate of the choice of the person thus obstructed was elected? (*Ashley* v. *White*, 3 Smith L. C. 264). Although the precise question involved in this case has not been judicially passed upon so far as we have been able to ascertain in the courts of this State, yet it has been decided in favor of the maintenance of the action by the Supreme Court of Minnesota in the case of *Larson* v. *Chase* (*supra*). In the well considered and well reasoned opinion of the court in that case it was held that the right to the possession of a dead body for the purposes of preservation and burial is a legal right—one which the law recognizes and protects—and that the violation of that right by an unauthorized and unlawful mutilation of the corpse before burial gives rise to an action for damages in favor of the surviving wife of the deceased. It is there also held that the rule of damages would allow a recovery for mental suffering and for injury to the feelings occasioned directly by the unlawful mutilation, and that although no actual pecuniary loss or damage was proven. It is not for us at this time to express any opinion with respect to the measure of damages in a case of this kind, but we are satisfied that the action will lie, and will lie in favor of the widow, under the circumstances disclosed by this complaint.

QUEBEC BAR ELECTIONS, 1896.—F. X. Lemieux, Q. C., bâtonnier, A. Robitaille, syndic; D. J. Montambault, Q. C., treasurer; N. N. Olivier, secretary. Council: Charles Langelier, C. A. P. Pelletier, Q. C., Fitzpatrick, Q. C., Pentland, Q. C., Bédard, Q.C., Dechêne, Cook and Gibsône.