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Dead Bodies--Nature of Rights in Dead Bodies

W. F. B.
West Virginia University College of Law

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son to maintain himself without such work, and regardless of his ability to obtain such employment. The petitioner was arrested for violating this statute. He now brings *habeas corpus* proceedings on the ground that the statute is unconstitutional. *Held,* petition granted. *Ex parte Hudgins,* 103 S. E. 327 (W. Va. 1920).

For a discussion of this case, see *Notes,* p. 171.

**Dead Bodies—Nature of Rights in Dead Bodies.**—This was an action of trespass on the case for wantonly and willfully disintering the remains of the plaintiff’s mother and son, exposing the same to public gaze and removing them to another burial place without the plaintiff’s permission. The plaintiff alleges he suffered mental anguish and great humiliation as a result of the defendant’s acts. *Held,* judgment for the plaintiff. *England et al. v. Central Pocahontas Coal Co.,* 104 S. E. 46 (W. Va. 1920).

Originally at common law no property rights were recognized in a dead body. *Regina v. Sharpe,* 7 Cox C. C. See 3 Coxe’s *Institution,* 203; 2 Blackstone, *Commentaries,* 429. On burial it became a part of the soil and the owner of the land would have a right of action for trespass. The modern cases universally allow recovery to certain persons for disinterment or mutilation of a dead body. There are, however, many divergent theories as to the basis of recovery. One is that it is founded on the next of kin’s right to possession. *Larson v. Chase,* 47 Minn. 307. Another is the law recognizes property in a human corpse, but property subject to a trust and limited in its rights. *Pettigrew v. Pettigrew,* 207 Pa. St. 313. The principal case and others rest recovery on the ground that there is a quasi-property right in the next of kin.

It is not alone with reference to property that legal rights exist. *Koerber v. Patek,* 102 N. W. 40. There is, as the law develops, a tendency to protect more and more the intangible rights of privacy and personality both individual and group. See Pound, “Equitable Relief Against Defamation and Injuries to Personality”, 29 Harv. L. Rev. 640. The greatest obstacle to allowing recovery for injury to such interests is that there is no external voucher for the reality of the injury. *Spade v. Lynn & Boston R. Co.,* 165 Mass. 285, 47 N. E. 88; *Homans v. Boston Co.,* 180 Mass. 456, 62 N. E. 737. It is submitted that the true ground in the principal case for giving recovery is that the mutilation or removing from its resting place of a dead body, without permission
of the next of kin, is an insult to the family right to have its dead rest inviolate. The voucher for the reality of the injury may be found in the mutilation or disturbing of the dead body. Since the injury is in its essence an injury to the family honor or dignity, it would follow that the recovery must depend upon the degree of the relationship.

—W. F. B.

**Joint Wrongdoers—Distinction Between Joint Tortfeasors and Contributors to Injury.**—The defendant was one of several independent upper riparian owners, refuse from whose mines destroyed the value of plaintiff’s property in such a way that it was very difficult to prove how much of the damage was done by each. *Held,* the independent owners are not jointly liable, nor is any one of them liable for such damages in their entirety. *Farley v. Crystal Coal & Coke Co.*, 102 S. E. 265 (W. Va. 1920).

The decision in the principal case is supported by the great weight of authority in this country. *Pulaski Anthracite Coal Co. v. Gibboney Sand Bar Co.*, 110 Va. 444, 66 S. E. 73; *Little Schuylkill Navigation, Railroad & Coal Co. v. Richard’s Admr.*, 57 Pa. St. 142. The decisions generally rest on the theory that the wrong done, upon which the right of action arises, is throwing refuse into the stream. This is in every sense a separate wrong, and torts originally several cannot be made joint because their consequences afterwards become blended and united with each other. *Little Schuylkill Navigation, Railroad & Coal Co. v. Richard’s Admr., supra; Swain v. Tennessee Copper Co. et al.*, 111 Tenn. 430, 78 S. W. 93. The chief obstacle in such cases is the practical impossibility of assessing damages with any degree of certainty. In a similar case the Ohio court held that the jury could not reach their verdict by ascertaining the amount of the whole damage, and dividing it by the number contributing thereto. *Upson Coal & Mining Co. v. Williams*, 75 Oh. St. 644, 80 N. E. 1134, 22 L. R. A. N. S. 283n. Most courts hold that the relative proportion of refuse thrown in by each may form some guide, and that a jury in case of such difficulty caused by the defendant himself, should measure the injury with a liberal hand. *Little Schuylkill Navigation, Railroad & Coal Co. v. French*, 81 1/2 Pa. St. 366; *Swain v. Tennessee Copper Co.*, *supra*. The court in the latter case intimates that in such cases the court would be slow to interfere with damages supposed to be excessive. Such a method of assessing