

# YALE LAW JOURNAL

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UNDER the new law known as the signature bill, recently passed by the Legislature of California, every statement made in a newspaper or other publication which "tends to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural or alleged defects of one who is alive, and thereby expose him or her to public hatred, contempt or ridicule, must be supplemented by the true name of the writer of such article, statement or editorial, signed or printed at the end thereof." Under the provisions of the law, any one may prosecute, and on conviction the fine shall be one thousand dollars, half of which is to go to the person prosecuting, and the other half to the State. The person aggrieved need not be the prosecutor, no limit as to time or country is set, and the truth of the declaration cannot be accepted as a defense of its publication. Naturally the press of the State is unanimous in its hostility to the act. The San Francisco Publishers' Association, acting under the advice of their counsel, that the bill is unconstitutional and void, has advised the newspapers of the interior towns to ignore the act, and many of these papers are so doing. In the city of San Francisco itself, the great dailies have all, so far, entirely disregarded the Statute. The *Argonaut*, however, technically obeys the Statute by signing to every article the name of the editor, on the ground that as he inspires and approves of every article, he alone should be held responsible. The opponents of the bill point out the absurdity, if not the impossibility

of complying with the act when the case is one of an article which has enlisted, one way or another, a large number of writers; to expect each writer to sign his sentences or paragraphs, especially after an editor has compressed or recast them, is clearly unreasonable. Nor can the editor sign the whole, for he is not the "true writer." Furthermore, if every person who helped prepare the article should subscribe, his name would stand for a great deal he did not write. There can be no question that the intention of the act is to impose a restriction upon the liberty of the press, but it is difficult to see what practical advantage the legislators expect to gain by its enactment. The reporters are not often able to respond in damages to a great amount, while on the other hand the editors are personally liable whether or not the article is signed. Evidently the act was framed merely to harrass certain newspapers. Fortunately there is good reason to believe that it is repugnant to the State Constitution, and that the courts will so construe it. We hope its constitutionality may soon be tested.

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THE decision of the Supreme Court of Michigan in the recent case of *Keyes v. Konkell* (78 N. W. 649), draws sharply the line beyond which American law does not go in the recognition of property rights in dead bodies. The English common law rule was that there could be no property in a human body. Our courts early recognized a quasi property right, holding that English precedent is not binding here, for the whole matter in that country was subject to the Ecclesiastical Courts. It is clear that the duty to care for the dead is one of the most sacred which human sentiment imposes. The right to fulfill this obligation is held to be a legal right which the courts of law will recognize and protect. It rests exclusively in the absence of testamentary disposition, in the next of kin—that phrase being construed in favor of surviving husband or wife. Their control over the corpse is in the nature of a sacred trust for the benefit of the family and friends, which courts of equity will regulate. Courts of law will give damages for a refusal of the right to bury, or for mutilation of the body, including compensation for injury to feelings. The recovery is based solely on the infringement of the right existing in the next of kin, not on any notion of an interference with property; for any ownership of the corpse is denied. The courts of Indiana alone have gone so far as to look upon dead bodies as property, un-

qualifiedly. The court in the case before us holds strictly to the more generally accepted rule, when it denies the right to replevy a corpse under a Statute authorizing the recovery of "personal goods and chattels." The plaintiff's brother, it seems, had died in a hospital. The undertakers to whom the body was entrusted had partially prepared it for burial, when the plaintiff demanded possession. The defendants refused, unless he would pay for their services; whereupon the replevin suit was instituted. In point of fact the plaintiff gained his point, for while the Statute provides, where the plaintiff fails in his case, for a return of the property or its value, the court said that a return of a dead body could not be ordered and its value in money could not be ascertained, and so gave judgment against the plaintiff only for costs. It would seem that although replevin will not lie, courts of equity will step in to secure the next of kin his legal right in cases where damages would prove an inadequate remedy.

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THE JOURNAL is pleased to announce the election to the editorial board of the following men: John Warren Edgerton, Robert Hubbard Gould, Leslie Elmer Hubbard, Walter Dunham Makepeace, Henry Hotchkiss Townshend, Nathan Ayer Smyth and George Zahm. At the same time the following men were elected associate editors: William H. Jackson, Cornelius P. Kitchel, George A. Marvin and Thomas J. Wallace, Jr.