
Province of Ontario.

COURT OF APPEAL.

From Teetzel, J.]

MAY v. BELSON.

[Oct. 13, 1905.]

Cemetery—Family burying ground—Landlocked plot—Reservation in deed—Interference with graves—Right of descendants to restrain—Abandonment—Possessory title—Access to plot—Way of necessity.

Persons having an estate or interest in a plot of ground set apart and used as a family burying ground, in which the bodies of ancestors and relatives are interred, may maintain an action to restrain destruction of, injury to, or interference with the graves or the gravestones or monuments upon or over them. *Moreland v. Richardson* (1856) 22 Beav. 596 and (1858) 24 Beav. 33 followed.

Part of a farm was set apart as a family burial plot in or about the year 1827, and in 1838 a parcel of the farm was conveyed to the defendant's predecessor in title, "save and except about one-quarter of an acre of said lands used as a burying ground." In 1890 one of the family erected on the plot, or what he supposed to be the plot, a monument to two of his ancestors, and surrounded the supposed plot with a hedge.

Held, upon the evidence, affirming the judgment of TEETZEL, J., that there was a burying ground in respect of which the reservation was made in the deed in 1838; that there was not an abandonment; that the hedge planted in 1890 enclosed a portion at any rate of the original plot; that neither the defendant nor any of his predecessors in title had acquired a possessory or other title to the plot; and that the plaintiffs had shewn a sufficient interest in or title to the plot to enable them to maintain the action.

The plot being a landlocked piece of ground, reserved out of a grant of the surrounding property, there was an implied way of necessity to and from it, limited to the purposes for which the plot was expressed to be reserved.

Collier, K.C., for defendant, appellant. *DuVernet* and *Ingersoll*, for plaintiffs.