

THE
ONTARIO WEEKLY REPORTER

VOL. X.

TORONTO, JULY 25, 1907.

No. 9

JUNE 28TH, 1907.

C. A.

McMARTIN v. CHISHOLM.

*Cemetery—Right of Way to Burial Plots—Interference with—
Way Shewn on Plan—Title to Lots—Injunction.*

Appeal by plaintiffs from judgment of CLUTE, J., at the trial, dismissing the action.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A.

C. H. Cline, Cornwall, for plaintiffs.

H. Cassels, K.C., and J. C. Brown, Williamstown, for defendants.

Moss, C.J.O.:—The plaintiffs in this case, claiming to be the owners of or entitled to two burial plots in a small churchyard surrounding St. Andrew's Church, Martintown, in the township of Charlottenburg, in the county of Glengarry, sought to restrain the defendants from proceeding with the work of extension or enlargement of the church edifice according to a plan which had been determined upon by the congregation. The ground upon which the right was claimed was that the proposed work would interfere with and diminish a right of way to the burial plots, which, the plaintiffs alleged, was shewn on a plan of the churchyard and the burial plots therein situate, in the shape of a roadway 15 feet wide between the north wall of the church building and the south end of the two burial plots. The plaintiff