

caretaker, who took upon himself to disinter the body and reinter it in another place within the cemetery enclosure. It is not proved but disproved that this transaction was directed or sanctioned by the corporation defendants. Upon being informed of what was done, steps were taken before action to restore the remains to the original place of sepulture, and to assure the plaintiff in her occupation and ownership of the plot.

The whole trouble originated in the blundering of purchasers of different plots, which resulted in the mistake made by the caretaker, who thought the body taken up had no right to be where it was, and proceeded to do what he believed to be right. No action is brought against him, and I do not see that the defendants are legally implicated in his misconduct: *Bolingbrook v. Swindon*, L. R. 9 C. P. 575.

The result is what I thought it should be at the conclusion of the trial. Action dismissed without costs.

MACMAHON, J.

DECEMBER 1ST, 1904.

TRIAL.

BARTLE v. PEARCE.

*Way—Right of—Easement—User—Statute of Limitations—
Declaratory Judgment—Injunction.*

Action for a declaration as to a right of way and an injunction restraining defendant from interfering with plaintiff's rights.

W. S. Brewster, K.C., for plaintiff.

T. Woodyatt, Brantford, for defendant.

MACMAHON, J.—James Grace was the owner in fee of the whole of lot 27 on the north side of Nelson street in Brantford (except a small part . . .), and he on 19th January, 1887, conveyed to defendant Pearce a portion of the lot . . . reserving thereout a right of way over a strip of land 10 feet 6½ inches in width on Canning street, and extending the same width 60 feet towards the rear of the said lot, to be used by Grace, his heirs and assigns, in common with Pearce (defendant), his heirs and assigns, as a means of ingress and egress for the use of the occupants of the buildings on lot 27. . . .