

This Court has decided in those last years that judgments ordering a reference were not final judgments and could not be appealable. *Clarke v. Goodall*, 44 S. C. R. 284; *Crown Life v. Skinner*, 44 S. C. R. 617.

The Parliament at its last session declared that those judgments could be brought before this Court.

I would have been inclined to think that the right of appeal should be determined by the law in force at the time of the judgment and not by the date of the action. However, a contrary jurisprudence of this Court exists, and I am bound by it. See *Hyde v. Lindsay*, 29 S. C. R. 99; *Williams v. Irvine*, 22 S. C. R. 108; *Mitchell v. Trenholme*, 22 S. C. R. 333.

The motion should be dismissed.

HON. MR. JUSTICE KELLY.

FEBRUARY 14TH, 1914.

EPSTEIN v. LYONS.

5 O. W. N. 875.

Way—Right of Way—Reservation of—Specific Purpose—No Right to Grant for Extraneous Purpose—Action of Trespass—Ascertainment of Boundary Line—Evidence—Ancient Surveys—Descriptions in Deeds—Possession — Mortgage — Foreclosure—Damages.

KELLY, J., *held*, that the benefit of a right or way reserved by a grantor to be used by him as the owner of certain lands could not be granted by him to an owner of other adjoining lands.

Purdon v. Robinson, 30 S. C. R. 64, followed.

Action to restrain defendants from erecting any fence, wall or other obstruction upon the rear of plaintiff's lands, to compel the removal of a wall already built, and to restrain the defendants from using any part of lot 3 on James street, Hamilton, for the purpose of access to the defendant's lands, being part of lot 2 on James street, and for damages. Tried at Hamilton without a jury.

G. L. Staunton, K.C., and W. A. Logie, K.C., for plaintiffs.
E. D. Armour, K.C., for defendants.

HON. MR. JUSTICE KELLY:—On February 14th, 1887, Mark Hill, who was the owner of lot 3 on the east side of James street, in Hamilton, mortgaged it to Edward Martin. Lot 3 is in a block bounded on the north by Cannon street