

THE COURT affirmed the orders made by the Master and LATCHFORD, J., but ordered that there should be no costs to either party of the motions in Chambers or of the appeal, upon the plaintiff undertaking to begin, within a week, a separate action for alimony, the defendant undertaking to accept service of the writ of summons and enter an appearance at once, and not to ask for security for costs.

DECEMBER 12TH, 1914.

EPSTEIN v. LYONS.

*Title to Land—Ascertainment of Boundary-line between Tiers of Lots—Evidence—Ownership of Legal Estate—Mortgage—Foreclosure—Possession — Non-user — Right of Way—Easement—Prescription—Injunction — Conveyance to Assignee for Benefit of Creditors—Title Outstanding in Assignee.*

Judgment upon the defendants' appeal from the judgment of KELLY, J., 5 O.W.N. 875, was pronounced by a Divisional Court composed of MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A., on the 27th November, 1914, and the result is noted ante 323.

Reasons for the judgment were given later by MAGEE, J.A.:—The defendants' appeal from the judgment of Kelly, J., which declares that the easterly boundary of the plaintiffs' lot 3 on James street in Hughson's survey in the city of Hamilton, is a line drawn parallel with and 153 ft. 6 in. distant easterly from James street, and that the plaintiffs are entitled to the use of an alleyway along the south side of lot 3 on Hughson street, in the same survey, in common with all others entitled thereto, and restraining the defendants from erecting any fence, wall, or other obstruction on the easterly part of the plaintiffs' said lands, and ordering the defendants to remove the wall by them erected thereon and to restore the ground to its previous condition, and restraining the defendants from using any part of the plaintiffs' said lot 3 to afford access to or as a right of way appurtenant to the defendants' lands, being part of lot 2 on James street.

The learned trial Judge has set out so fully the facts that it is unnecessary to refer to them in detail.