

officio, and the application must be to an appellate tribunal. In the first case a different state of facts is presented for a new adjudication, and in the second case a new adjudication on the same facts is asked for from the appellate court.

The principle of *res judicata* is thus stated in Bigelow on Estoppel: "An issue, once determined by a court of competent jurisdiction, may be relied on as an effectual bar to any further dispute upon the same matter, whether by parties to the litigation or those who, termed privies, claim under them; this conclusiveness including of course as well the law as the facts involved in the case." Does this principle apply to a judgment pronounced, in which is registered by the court the agreement of the parties, the judicial mind not having been called on to consider or decide any of the questions involved?

If such a judgment be complained of by any party, how is he to seek his remedy? There can be no appeal because the court is not responsible for the findings of the judgment; there has been no adjudication in respect of which an appellate court can be called upon to act. The authorities well establish this: *Daniell's Chy. Practice*, 4th ed., 875, 1427; *Webb v. Webb*, 3 Swanst. 658; *Smith v. Turner*, 1 Vern. 274; Ont. Jud. Act, sec. 65, *Holmsted & Langton*, 74.

The proceeding in England to vary or set aside a consent judgment must now be by action as it was formerly by original bill: *Smith's Chy. Prac.*, 6th ed., 480; *Bradish v. Gee*, Amb. 229; *Webb v. Webb*, ubi sup.; *Davenport v. Stafford*, 8 Beav. 503, 523; *Flower v. Lloyd*, 6 Chy. Div., 297; *Meadows v. Duchess of Kingston*, Amb., 756; *Patch v. Ward*, 3 Chy. App., 203; *Emeris v. Woodward*, 43 Chy. Div., 185.

In Ontario, Consolidated Rule 782 says: "Any party entitled * * to impeach a judgment or order on the ground of fraud, is to proceed by petition in the cause," etc. This rule would seem to embrace the case of the impeachment of a consent judgment on the ground of fraud. There is no rule similar to this in the English practice. It is, however, submitted that this rule does not apply to a case where for discovery, for the examination of witnesses, and the bringing in of parties (not parties to the original judgment), the machinery of an action