

under the provisions of the Act, and shortly thereafter the liquidator was appointed.

The proceeding to place McKinnon on the list of contributories was commenced on the 8th March, 1910, and was disposed of on the 31st March, 1910, by the Official Referee, who virtually gave effect to the answer or defence of *res judicata* set up by McKinnon, and struck his name from the list of contributories. Upon appeal this order was affirmed by Meredith, C.J. . . .

It is not now questioned that a judgment by consent may raise an estoppel *inter partes*. That it is as binding and conclusive between the parties and their privies as any other judgment (subject, perhaps, to certain exceptions in cases of fraud or mistake), is well established by the authorities referred to by the learned Chief Justice, to which may be added the case of *Hardy Lumber Co. v. Pickeral River Improvement Co.*, 29 S.C.R. 211. . . .

[Reference to and quotations from *In re South American and Mexican Co.*, [1895] 1 Ch. 37, 45, 50.]

The only difficulty in that case, as in this, was to ascertain what was and what was not in issue and what was actually determined or settled by the judgment. The rule of estoppel by judgment is simple and plain, viz., the facts actually decided by an issue in one suit and in a competent Court cannot be again litigated between the same parties or their privies, and are conclusive between them. But the appellant's contention in this case is, that, inasmuch as there were at least two issues in the former suit, viz., whether McKinnon was a shareholder and whether the calls were duly made, success upon either one of which entitled McKinnon to judgment of dismissal of the action, and inasmuch as judgment on the first issue was the only one which would be conclusive, and it was not apparent upon the record and proceedings upon which of the issues he did succeed, he failed to prove the *res judicata*.

It is said further that the inquiry is to be made by reference only to the pleadings and judgment in the former action. This appears to be stating the rule in too restricted a sense. For, while it is true that, in cases where a judgment or decree is couched in general terms, the extent to which it ought to be regarded as *res judicata* can only be determined by ascertaining what were the real matters of controversy in the cause, the inquiry is not limited strictly to what is to be found upon the record and in the judgment. As the learned Chief Justice says, the Court, for the purpose of ascertaining what was actually determined in the