

separate defences were filed by the defendants other than Wagner; that of the now defendant Snetzinger claiming title as mortgagee under the defendant Sheets, whose defence he adopted. The effect of the several defences was to raise distinctly the issue between the defendant Tait (now the plaintiff), on the one hand, and the defendants Sheets and Snetzinger (now the defendant), on the other, of which of them owned the parcel of which the 15 acres formed a part. That issue was tried by the Judge of the Exchequer Court and found in favour of the now plaintiff and affirmed by the Supreme Court of Canada.

Upon the trial of this action (in which the estoppel was pleaded by the plaintiff) the proceedings in the former action were proved, and other evidence given. FALCONBRIDGE, C.J., in giving judgment for the plaintiff, proceeded entirely upon the principle of *res judicata*.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A.

E. D. Armour, K.C., and R. Smith, K.C., for the defendant.
G. H. Watson, K.C., for the plaintiff.

GARROW, J.A.:—It is true that in the former action the subject matter was the 15 acres, and not the whole parcel. But the inquiry into the title to the 15 acres necessary to determine to whom the expropriation money should be paid necessarily involved an inquiry into and an adjudication upon the facts upon which the title to the whole parcel depended. And, as said by Lord Ellenborough, C.J., in *Outram v. Morewood*, 3 East 346, 355: "It is not the recovery but the matter alleged by the party, and upon which the recovery proceeds, which creates the estoppel. . . . The estoppel precludes parties and privies from contending to the contrary of that point, or matter of fact, which having been once distinctly put in issue by them, or by those to whom they are privy in estate or law, has been, on such issue joined, solemnly found against them."

Appeal dismissed with costs.

MEREDITH, J.A., concurred, for reasons given in writing.

MOSS, C.J.O., OSLER and MACLAREN, JJ.A., also concurred.