## *ESTOPPEL BY TAKING A BENEFIT.*

If there is one point more clearly settled than another on the thorny subject of estoppels, it is that the judgment of a Court of record is conclusive between the same parties. The rule is thus laid down in the *Duchess of Kingston's Case;* and in Buller's 'Nisi Prius' the reason is stated to be that 'the verdict ought to be between the same parties, because otherwise a man might be bound by a decision who had not the liberty to cross-examine.' If authority on the point be sought in the domain of legal maxim, it is found in the saying 'Res inter alios acta alteri nocere non debet.' But sometimes a man may be estopped, not indeed by a judgment to which he was not a party, but by his conduct when and after the judgment came to his knowledge. A good instance of this is found in the recent case of *In re Lart; Wilkinson* v. *Blades*, 65 Law J. Rep. Chanc. 846, in which a man who was not bound by a judgment delivered in a former action to which he had not been made a party, but who had been aware of the judgment at the time when it was delivered and had received and retained a fund which it put into his pocket, was estopped, when identical circumstances subsequently arose, from reopening any of the questions which that judgment covered by taking proceedings relating to another fund arising under the same will; even though the new claim was made in respect of a different interest. The nearest analogy which could be found was in the practice of the Probate Division, in which when a will is disputed, and an interested party does not intervene, he is bound by the proceedings although he was not a party to them. To quote Lord Penzance's language in *Wytcherley* v. *Andrews*, such a party cannot complaim if, knowing what was passing, he has been content to stand by and see his battle fought by somebody else in the same interest. And since *Wytcherley* v. *Andrews* was decided provision has been made by Rules of Court for enabling those who have an interest in an action to be added as parties. From his knowledge of the facts, and more especially from the circumstance that he took the money, the plaintiff in *In re Lart* seems to have been really, though not technically, 'privy' to the judgment which he afterwards complained of. The case is a curious one from the apparent absence of direct authority on the point.—*Law Journal.*