

further moneys under the same agreement, the Court held that the parties to the consent judgment were thereby estopped from disputing the validity of the agreement. The proposition is laid down that "a judgment by consent of parties operates an estoppel inter partes as much as if the case had been fought out. It makes no difference that the Court has not exercised its mind on the matters in controversy." It would seem to be the fair meaning of this language that "although a consent judgment does not import 'res judicata' it is, nevertheless, an estoppel." The case of *Jenkins v. Robertson* is referred to in the opinion of the Court, and very properly, it is submitted, distinguished on the ground of the want of authority on the part of the consenting parties in the previous proceeding referred to in that case to represent the plaintiff in the second action. An estoppel is worked by consent though judgment not entered: *Davis v. Davis*, 13 Ch. Div. 861.

The setting aside or variation of a consent judgment it seems may be had on such material as would enable the Court to set aside or vary an agreement between the parties: *Attorney-General v. Tomline*, 7 Ch. Div. 388; Black on Judgments, 320. A consent order was set aside on this ground in the case of *Huddersfield Banking Company v. Lister* (1895), 2 Ch. 273.

The case of *The Bellicairn*, L.R. 10 P.D. 161, was not a case proceeding upon any different ground. In that case there had been a judgment by consent dismissing an action regularly pronounced and entered. Subsequently the parties, without going before the Court, went before the Registrar, who had no jurisdiction in the matter, and by consent took an order setting aside that judgment. There was no other proceeding to set it aside or impeach it; the Court treated the Registrar's order as a nullity, holding that to set aside a consent judgment, as in the case of any other judgment, even with the consent of the parties, the facts must be before the Court who pronounced it, or some other Court of the same jurisdiction, and that the facts of the case were not such as would have induced the Court to set aside the judgment then in question.

Inasmuch as agreements, in addition to other grounds of