

is required to present the matter complained of properly before the court. This was held by the Chancellor in *Delap v. Charlebois*, affirming the Master in Chambers, January 10th, 1893, but not reported. Except when this rule would apply, the Ontario practice would follow that of England.

There is no opening for a complaint against the Court in the case of a judgment by consent. The answer to the complainant is at once his own agreement, of which the record, till successfully impeached, is conclusive evidence. It is the agreement of the parties which must be reached by the complainant. Does then the mere act of the Court in registering the agreement of the parties in a judgment make that agreement more conclusive upon the parties than the record of the presentation of the facts to the Court in a contested case?

Does the act of the Court make the conclusions of the agreement *res judicatæ*?

These are the crucial questions in relation to the conclusiveness of consent judgments.

If the record in a contested case may be varied on the grounds stated, by parity of reasoning the consent or agreement, which in the record of a consent judgment takes the place of the presentation of facts in a contested case, should be open to similar proceedings. In the one case the consent or agreement is an intermediate step (by which the parties have determined their contest) standing between the contested facts and the Court, while in the other case the facts themselves are presented to the Court for adjudication where an agreement cannot be had; in short, the parties by agreement in the one case do that which in the other is left to the Court.

The estoppel by record, and the estoppel in pais by the agreement before it is registered in a judgment of the Court, are respectively effectual for the same purpose. The estoppel is co-extensive with the judgment or with the agreement, as the case may be, adapting itself always to the mutations, which, as a consequence of proper proceedings, may take place in the judgment or agreement out of which the estoppel arises. When the judgment or the agreement is set aside the estoppel