

the order shall be a bar to any future action. This is exactly equivalent in effect to a judgment under such circumstances as entitle the defendant to allege that the matter in question has passed into judgment binding both parties. For if it is not a bar in that sense, it is no bar at all. The effect of the order is well illustrated by Lord Herschell's remark in *Owners of Cargo of Kronprinz v. Owners of Kronprinz* (1887), 12 App. Cas. at p. 262: "The Judge's order to discontinue—unless it were made a condition of the discontinuance that no other action should be brought—would not operate as a bar."

It is quite true that the bar is against a subsequent "action;" but I take it that the effect of the exercise of the Judge's power, thus expressed, is to enable the issue of *res judicata* to be effectively raised in other proceedings if they involve the same parties and the same issue.

I think that the Master of Titles has, notwithstanding some of the expressions in his judgment, intended to decide, and has decided, that the effect of the order in question is to determine, in the proceedings before him, that issue in favour of the appellant here. I am of opinion that he is right in so holding. He is dealing with the rights of the parties before him; and, if he finds that the claimant is estopped or barred of record in regard to the right he is setting up, the Master can dismiss the claim; and this he has done. He has in fact disposed of the matter on the merits, and no good purpose would be served by again re-mitting it to him.

The appeal should, therefore, be allowed with costs, and the formal order objected to vacated and set aside.

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OCTOBER 22ND, 1913.

KETTLE v. DEMPSTER.

*Negligence—Injury to Person Working on Highway—Negligence of Driver of Vehicle Owned by Defendant—Evidence—Finding of Trial Judge—Appeal.*

Appeal by the defendant from the judgment of FALCONBRIDGE, C.J.K.B., who tried the action without a jury, in favour of the plaintiff.

The action was brought to recover damages for injury said to have been caused to the plaintiff by the negligence of the defendant's servant, in the circumstances set out below.