

GEORGE W. STUART.....(PLAINTIFF).....APPELLANT ; 1893
 AND *Dec. 1, 2,
 CHARLES F. MOTT.....(DEFENDANT)....RESPONDENT. 1894
 ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA. *May 1.

Res judicata—Different causes of action.

S. brought a suit for performance of an alleged verbal agreement by M. to give him one-eighth of an interest of his, M.'s interest in a gold mine but failed to recover as the court held the alleged agreement to be within the Statute of Frauds. On the hearing M. swore that he had agreed to give S. one-eighth of his interest in the proceeds of the mine when sold, and after the sale S. brought another action for payment of such share of the proceeds.

Held, reversing the decision of the Supreme Court of Nova Scotia, Fournier and Taschereau JJ. dissenting, that S. was not estopped by the first judgment against him from bringing another action.

APPEAL from a decision of the Supreme Court of Nova Scotia (1) reversing the judgment at the trial for the plaintiff.

The facts of the case are sufficiently set out in the above head-note.

Osler Q.C. and *Newcombe* for the appellant.

Borden Q.C. and *Mellish* for the respondent.

THE CHIEF JUSTICE.—The majority of the court are of opinion that the appeal should be allowed and the judgment of Mr. Justice Townshend restored.

FOURNIER J.—I am of opinion that the appeal should be dismissed.

TASCHEREAU J.—I think that the plaintiff's action was rightly dismissed. He is estopped from taking

*PRESENT—Sir Henry Strong C.J. and Fournier, Taschereau, Gwynne, Sedgewick and King JJ.

1894 the position he would now take. I would dismiss the
STUART appeal.
v.
MOTT.
Gwynne J. GWYNNE J.—I am of opinion that this appeal should
be allowed with costs and that the judgment of the
court of first instance in favour of the plaintiff should
be restored. The only real defence to the action urged
before us was that the plaintiff's cause of action was
estopped and barred by a judgment rendered in favour
of the defendant in a former action at suit of the plain-
tiff which, as was contended, operated as *res judicata*
upon the matter of the present action; but concurring
herein with the learned judge of first instance, I am
of opinion that there is nothing in the former action
which operates as a bar or estoppel in the present.

KING J.—I concur in the allowance of this appeal

Appeal allowed with cost

Solicitors for appellant: *Henry, Harris & Henry.*

Solicitors for respondent: *Lyons & Lyons.*
