aside upon an application in the same action, but that a new action must be brought for that purpose.

PRACTICE—AMENDMENT AT TRIAL—PLEADING JUDGMENT IN FORMER ACTION—ORD. XIX., R. 15, ORD. XXVIII., R. 1, (ONT. RULES 402, 444).

Notwithstanding the wide powers of amendment, at any stage of the proceedings, which the Court possesses, *Edevain* v. *Cohen*, 43 Chy.D., 187, shows that there are cases in which it is the duty of the Court to refuse to exercise them merely to enable a defendant to raise a technical defence. This action was brought against the defendants, Cohen and Cook, for wrongful removal of furniture. At the trial it appeared by the plaintiff's evidence that they had recovered judgment against other persons engaged in the removal. After the evidence for the plaintiff and Cohen had been taken, Cook asked to amend by setting up the judgment, and thereupon Cohen made a similar application. North, J., refused the application, and from this decision Cohen appealed, but the Court of Appeal (Cotton, Bowen, and Fry, L.JJ.) agreed that the appeal should be dismissed. Cotton, L.J., said, "I think this amendment is proposed merely to enable the appellant to avail himself of what I may call a technical rule of law, supported by the cases which have been referred to *(i.e., that a judgment against one or more of several tort feasors is a bar to an action against the others for the same cause)* and not in order to determine the real issue which ought to be determined in the action. Further, this objection was not taken and insisted upon at once by Cohen . . . it was first mentioned and the objection was first taken by counsel, who then appeared for another defendant, and it was only raised and insisted on on behalf of Cohen after substantially all the evidence had been taken, and he had taken his chance of the evidence turning out in his favor."

MORTGAGE—SALE BY FIRST MORTGAGEE—MISTAKE IN PARTICULARS—COMPENSATION TO PURCHASER —LIABILITY TO SECOND MORTGAGEE—MEASURE OF DAMAGES.

Tomlin v. *Luce*, 43 Chy.D., 101, is an appeal from the decision of Kekewich, J., 41 Chy.D., 573, noted *ante* vol. 25, p. 489, the propriety of which we ventured to doubt. The Court of Appeal (Cotton, Bowen, and Fry, L.JJ.) were of opinion that the learned judge had erred as to the measure of damages. The case, it may be remembered, was one in which a mortgagee had sold under a power of sale, and, owing to a mistake in the particulars, the purchaser at the sale was awarded compensation. Kekewich, J., held that the mortgagee was accountable to a subsequent mortgagee for the full amount of the purchase money, without any deduction of the sum allowed for compensation; but the Court of Appeal decide that the true measure of liability is the amount which could have been obtained for the property had there been no mistake in the particulars.

PARTNERSHIP—POWER OF PARTNER TO COMPROMISE DEBTS—POWER TO ACCEPT SHARES IN SATISFACTION OF PARTNERSHIP DEBT.

In *Nieman* v. *Nieman*, 43 Chy.D., 198, the Court of Appeal (Cotton, Bowen, and Fry, L.JJ.) reversed a decision of Kekewich, J., on a point of partnership law.