action. The charge of fraud was super-added, but that charge involved the assertion that a falsehood was knowingly stated, and before the question of *scienter* was reached a conclusion of fact adverse to that which had been arrived at by the jury would have to be adopted.

Per BURTON, J.A.—In admitting evidence under the defence, the court would not be assuming to re-try the issues disposed of in the foreign court, the finding upon those issues, being conclusive, cannot be questioned here; but it can be shewn that the decision arrived at was obtained by fraud practised upon the foreign court, and that right cannot be defeated because, in order to establish it, it becomes necessary to go into the same evidence as was used on the former trial to sustain, or defeat, that issue. The issues are not the same, although if the facts now discovered could have been shown at the former trial they would have secured a different result.

The authority of decisions of the English Court of Appeal, and the case of *Abouloff v. Oppenheimer*, 10 Q. B. D. 295, discussed.

MATTHEWS v. THE HAMILTON POWDER CO.

Master and servant—Injury caused by fellow servant—Negligence.

Action for damages by the administratrix of M. who was killed by an explosion of the defendants' powder mills, caused by a shaker being out of repair. W., a director of defendants, had some time before the explosion, when the works were idle, given express directions to C., the superintendent and head of the works, to have the shaker repaired before commencing operations, but C. neglected to attend to it, and the repairs were not made. It was not shown that W. in any way assumed to direct the practical workings of the mills, or that he had any special knowledge or ability to do so, and there was no suggestion that C. was an incompetent or improper person to employ.

Held, reversing the judgment of the Q. B. Division, 12 O. R. 53, that the intervention of W. had not taken the case out of the general rule of law, that the defendants were not responsible for accidents due to the negligence of a fellow servant, which C. was.

CHAPUT v. ROBERT.

Qui tam action—Non-registration of partnership—Parties—Joinder of parties—Practice.

An action by several plaintiffs, *qui tam* against two defendants for penalties for not registering their partnership under R. S. O. c. 123, of which s. 11 gives the action to any person who may sue.

Held, reversing the judgment of the court below, (1) That under the above section and the Interpretation Act an objection to the action being brought in the name of more than one person should not prevail; (2) That the circumstance that the plaintiffs lived out of the jurisdiction could not defeat their action; (3) That an objection that the claims against the two defendants were improperly joined in one action was not a ground of demurrer; and

Per OSLER, J.A.—There was no inconvenience or impropriety in joining these two defendants in one action.

BELL v. MACKLIN.

Vendor and purchaser—Misrepresentation—Compensation—Appeal on question of fact.

After conveyance of land by the defendant to the plaintiff, the latter complained that he had been induced to purchase by a misrepresentation of the quantity of land, and by his statement of claim asked to have the conveyance rescinded, or for an abatement of the purchase money. The contract for sale was in writing and contained no provision for abatement or compensation, and the deed conveyed the precise land which the defendant swore he had agreed to sell.

At the trial PROUDFOOT, J., pronounced a decree for compensation to the plaintiff for deficiency in the land sold, and the Divisional Court affirmed it.

Held, that as a matter of law the award of compensation was, under the circumstances, erroneous; and that upon the evidence the finding of fact by the trial judge could not be supported, and therefore rescission could not be decreed, HAGARTY, C.J., dissenting.

The circumstances under which an Appellate Court will reverse the decision of the trial judge upon a question of fact discussed.