judgment that it is made on the part of the plaintiff and not usually on the part of the defendant. It is accordingly grounded, when made by the plaintiff, on an objection to the pleading of the latter. Thus when the plea confesses and attempts to avoid the declaration by some matter, which amounts to no sufficient avoidance of it, in point of law, and the plaintiff, instead of demurring, has taken issue upon the truth of the plea in fact, and that a verdict has been found for the defendant, yet the plaintiff may move that, without regard to the verdict, the judgment be given in his favor, notwithstanding the verdict—for the plea having confessed it by an allegation which, though true in fact, is bad in law, it appears upon the whole, that the Plaintiff is entitled to maintain his action and have judgment. Formerly an impression prevailed that this motion could be made only on behalf of the plaintiff—but a contrary opinion seems to prevail now in England and instances of motions of this description have been made on behalf of the defendant. It is certain that since the introduction of the statute 14 and 15 cap. 89 the courts of Lower Canada, both those of original and appellate jurisdiction, have entertained and adjudicated upon such motions, made on the part of defendant. The cases are numerous and it is quite unnecessary to cite them here.

The Court has deemed it right to advert to these elementary principles, laid down in all English text books of authority, in order to show that there has been, in some respects, a deviation in our Courts from the strict practice in England and the United States in regard to motions for judgment *non obstante veredicto*. This no doubt has resulted from the recent modification of our jury system. General verdicts were abolished by the Act of our Legislature 14 and 15 Vic. Cap. 89, and special verdicts or findings are substituted in their stead. The 4th section of that Act also confers on the Superior Court the power to set aside on motion verdicts and grant new trials—to arrest judgment and to set aside verdicts with the view no doubt of entering judgment notwithstanding or contrary to the verdict; and it appears to me that the decisions, as well of this Court, as of the Court of Appeals, recognize a power, in the tribunal of original jurisdiction, to set aside verdicts of juries, upon mixed questions of law and fact, and upon questions of law alone and of fact alone.

I think the decisions go this length. The cases are numerous but familiar to the Bar and need not be cited. Upon a careful review of these cases I am therefore clearly of opinion that under our system of jury trials the motion for judgment *non obstante veredicto*, for the reason that no evidence or no sufficient evidence has been adduced, in support of the verdict, is a proceeding sanctioned by the practice of our Courts. If there be an objection to the technical term *non obstante veredicto*, we may call it simply a motion to *set aside* the verdict and to enter judgment for Plaintiff, or for the Defendant, as the case may be, notwitstanding the finding of special facts by the jury—in other words notwithstanding the verdict. Holding then that these motions are regular, in the particulars above adverted to, it now becomes my duty to enquire whether either of them should be granted in this case, and if either, which of them?

Taking up first the question of evidence, we have to weigh the value of that evidence if it appear that any has been adduced in support of the Plaintiff's pretensions as he has presented them in the present action. The Plaintiff claims £6500 damages resulting from the breach of an alleged contract entered into by Defendants, as a commercial firm, to take him into partnership. He avers that he sustained that amount of damage from having been "deprived of profits and advantages, and of position resulting from a partnership in the best and most extensive establishment of the kind in Canada." By their plea, the Defendants deny the existence of any such contract, and that even if any such contract had been entered into by them (which they expressly deny) they set forth what they consider sufficient reasons to show that Plaintiff had forfeited all right to the fulfilment on their part of the pretended contract. Issue being joined, the first question submitted by the Court to the Jury was in these words, and it is obvious that, upon their answer to this, the Plaintiff's case mainly depended:—"Did the Defendants, as a commercial firm, contract with the Plaintiff to admit him as a partner in manner and form alleged in the declaration?"

To this question the Jury answered unanimously in the affirmative, and it is their finding and the evidence in support of it I have now to consider. The Defendants contend that this part of the verdict is wholly unsustained by evidence; that, in point of fact, it is contrary to the testimony adduced in the cause.

The first reason in support of their motion is "that no evidence was adduced at the said trial to prove that the Defendants, as a commercial firm, did contract with the Plaintiff to admit him as a partner in manner and form as alleged in Plaintiff's declaration." And their sixth reason—

"That the said findings and each and every of them were contrary to law and to the evidence of records." The paper writing referred to in the Plaintiff's declaration as embodying the contract, was written by Benjamin Lyman, the senior partner in the firm of Lymans, Savage & Co., the Defendants, and in the form of a letter from him to Mr. Higginson, the Plaintiff. The terms and purport of that letter are as follow:

"MONTREAL, 4th April, 1857.

"*Thomas S. Higginson, Esq:*

"DEAR SIR,—Touching the conversation the writer had with you, the present is to say that we will allow you £200, say two hundred pounds per annum, and also five per cent on the profits of the business carried on here for the next two years, after which time we will admit you a partner on terms that will be mutually satisfactory.

"This letter to be strictly private and confidential.

"Yours very truly,

"LYMANS, SAVAGE & CO."

This is the written contract upon which the Plaintiff relies, and I proceed now to enquire into the evidence relating to it. The testimony of Benjamin Lyman in relation to this paper, is as follows:—

"On the 4th April, 1857, I was senior partner of the firm of Lymans, Savage & Co. On that day I addressed a letter to Plaintiff on my own responsibility, and at the time told Plaintiff so;