

The written evidence adduced by the Plaintiff, consists 1st, of the agreement or paper writing referred to in the declaration; and 2nd, of two sets of correspondence the first between the Plaintiff and Benjamin Lyman, and the second between Plaintiff and the firm of Lyman, Savage & Co. The first commences with a letter from B. Lyman to the Plaintiff, written at Toronto, on the 1st April, 1859, in which the writer suggests to the Plaintiff that he might get the Medical Hall, as Beers was dead, and that from circumstances that had come to his (B. L.'s) knowledge, he will be unable to recommend to his partners the Plaintiff's admission into their firm as a partner. On the 2nd April, 1859, the Plaintiff acknowledges the receipt of that letter, denies his interference with the contract by any act of his, and asks for an explicit relation to himself, in a private note, of the nature and cause of the charge. His letter of the 16th April, calls B. L.'s attention to his letter of 2nd April, to which the latter replies on the same day, declaring his own willingness to admit the Plaintiff into the firm, upon terms which could be agreed upon between them, and as the other partners should consent to, but for the facts which had come to the knowledge of the writer. The correspondence with the firm then opens, with the Plaintiff's letter to them of this last date, 16th April, covering copies of the agreement and of the correspondence above, states his unconscionableness of any action by him to break or forfeit that agreement, and requests that it may be carried out by the other partners and by B. L. himself; on the 28th and 30th he draws their attention to his note of the 16th instant, and by the latter claims their favorable notice of the agreement, under which he is intitled to 1/4 part of the business, as there will now be four partners, and thinks his name should appear at all events as partner, &c. and demands to act as such partner. The reply of the firm, dated 2nd May, denies his assumption of being their partner, declares it unfounded within his own knowledge, ignores the existence of such partnership between them and him, qualifies him as their clerk, and finally asserts the existence of insuperable objections against any proposition for his admission into their firm as a partner. On the 3rd May, 1859, this portion of the correspondence closes by Plaintiff's letter, acknowledging the answer of the firm, and intimating his intention to seek a reparation of the injury done to him. The action followed almost immediately, the declaration being dated the 7th of May, 1859.

No reference will at present be made to the other written evidence produced nor to the receipts for the monies paid as they do not specially apply to the contract.

The testimony consists of the evidence of Benjamin Lyman and of a few other persons. That of Benjamin Lyman is taken under the authority of a recent statute 23 V. Chap. 97 sec. 49, which enables a party in a cause to be brought up and examined and cross-examined as a witness. Benjamin Lyman explains the origin of agreement, which he says was written at Plaintiff's request, and represented his Benjamin Lyman's own feelings towards the Plaintiff, but not those of the firm who might not agree to it; told Plaintiff he had not their sanction for it, to which Plaintiff replied if they did not it would go for nothing; says that the con-

ditions of the two years service at £200 per annum and the 5 per cent on the profits here, were subsequently carried out—that he had suspicions of Plaintiff's morality in the summer of 1857, proves the correspondence produced, states the gross business of the firm at £75,000 per annum, denies all knowledge of a letter from Plaintiff of 5th April, 1857, accepting his proposal of agreement asserts that the £1000 was offered by the Plaintiff as a loan on call at interest of 8 per cent and was only called by a lawyer's letter after the rupture with the Plaintiff, he did not tell his partners of the agreement until after his letter of the 1st April, 1859. The 5 per cent was not entered in the books of the firm until this year, and was unknown to his Co-partners until the Plaintiff's demand to them to take him into partnership. £300 was received by Plaintiff in full for that claim and was charged to Benjamin Lyman's private account, as having been proposed by him without their consent. Heard of a copartnership spoken of between Plaintiff and late Wm. Lyman, Plaintiff said Wm. Lyman could not succeed, never heard that Plaintiff could have had the Medical Hall. Plaintiff's salary at £200 per annum was credited to the Plaintiff, and at his departure his account was made up by the Book-Keeper, who had been directed by witness about time of his Benjamin Lyman's departure for England, to credit the Plaintiff with the £200 per annum. Did not notify the Plaintiff in 1857 of his conduct, or previous to 1859, never tendered the £1000 or the 5 per cent, for which separate actions were brought. The latter was paid in 1860. That account of profits could not be made up before. Admits the good business capacity of Plaintiff.

Mr. Workman testifies to having seen the letter of the 4th of April 1857, about that date received it from Plaintiff and kept it in his possession for a year, states that Plaintiff had prospects of business connection with the late Wm. Lyman, by whom he was requested to speak to the Plaintiff about a connection—a connection also was proposed or spoken of with Mr. Carter, but advised Plaintiff to continue with his house and to get any offer of partnership in writing, mentions that a part of the £1000 paid over to Lyman, Savage & Co., £700 was held by the late firm of witness, only paid 6 per cent on the £700 being partly the Plaintiff's and partly his father's money.

Mr. Carter testifies to his willingness to have received Plaintiff into a share of Medical Hall business. Defendants business largest of the kind in the province, the good will a years profits, net profits of a fair business, that is wholesale and retail, was Executor of late Wm. Lyman's estate to which Defendants had to pay £18 to £20,000.

Mr. Sinclair was aware of offers made to Plaintiff from Defendant and others, and advised him to accept the former, did not see the letter of proposal.

Mr. Spence, saw the Defendants letter and Plaintiff's reply in a copy shortly after his receipt of the original document signed Lyman, Savage & Co.; on a Sunday in Defendants store, shortly after seeing Defendants letter, Plaintiff said "there is my answer to their letter lying on the desk;" did not read it, read a copy, draft of reply shewn to him by Plaintiff, none of Defendants present at the time nor any one in De-

fendants premises.

Mr. Lyman, defendant. With this closed his defendant's conduct in the Scott, his the defense and in w for him t of ill-fam above na detail this will be fr be able served his character. Savages 1857, with confirmat Lyman as the plain whilst in Mr. Clare never spe firm—tha not seen I call at 8 and that the premi of the pre had each that plain made no until about May 1859— to 1859 be or £5,000 Large inc plaintiff's 2 months I swear if h by any one have seen had been I plaintiff fo to B. L. or to allow it up to 1st J that of 1857.

The evide and the pl the defend forward to his family. several tim of 1858-185 of Turnout. Higginson friendly w them of his tore—after Hotel, whe and that t store but was offered rejected. W has been of Mr. B. L himself und to render t submitted f