

28th April, 1859.

Montreal:
I permit me to remind
you of the 16th
I am obliged to you for

S. HIGGINSON.

30th April, 1859.

Montreal:
I have again to call
on your part to the
4th April, 1857,
me to urge it on
relative situations

ance, it would ap-
s on your part to
of my position.
I have this, and have
your views on
alternative but to
most respectfully,
I claim as my

of April, 1857, I
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small interest in
appearing in it.
lder myself, and
n equal share in
partners of the
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ne-fourth share.
o be made in the
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S. HIGGINSON.

May, 1859.

I permit me to remind

you of the 16th

I am obliged to you for

S. HIGGINSON.

30th April, 1859.

Montreal:

I have again to call

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4th April, 1857,

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relative situations

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I claim as my

of April, 1857, I

er on the 4th in-

small interest in

appearing in it.

lder myself, and

n equal share in

inflicts an unmerited injury upon me. To re-
sume the position of a clerk is what you can-
not for a moment expect me to do. I was afraid,
from the delay occurring, and the objections
made by Mr. B. Lyman, that a difficulty existed
which I hoped would be overcome, and for that
reason felt it to be my duty to press a matter
of such vital importance to me until it should
be placed on a satisfactory footing. I never ap-
prehended that it could have resulted in a com-
plete repudiation on your part of the agree-
ment. I am sure that I have shown no want of
disposition to perform my part of the engage-
ment which I earnestly desire to carry out,
but as you decline to do so on your part, I must
try if no other remedy is left to repair the in-
jury I sustain.

Yours truly, THOS. S. HIGGINSON.

MONTREAL, 8th August, 1859.

Messrs. Lyman, Savage & Co., Montreal:

GENTLEMEN,—As there is besides the subject
of the unfortunate litigation now pending, an
unsettled account between us which it is desir-
able should be adjusted; I beg leave to call
your attention to the conditions on which I re-
mained in the establishment of Lyman, Savage
& Co., between the 4th April, 1857, and the 4th
April last, viz.: that besides the £200 (two
hundred pounds per annum, I should have 5 p.
c. (five per cent) on the profits of the business.
I have respectfully to request that you will fur-
nish me with an account of the profits of these
two years, in order that I may be better enabled
to make a correct statement of this claim.

Yours, &c., T. S. HIGGINSON.

P.S.—Please address answer to me at Ottawa
Hotel here.

MONTREAL, 18th May, 1860.

Received from Benjamin Lyman the sum of
two hundred dollars in full of all claim or
demand against him or the firm of Lyman, Sa-
vage & Co., for five per cent. of the profit of
their business, from the fourth of April, eighteen
hundred and fifty-seven, to the fourth of April,
eighteen hundred and fifty-nine, and in full set-
tlement of the suit I have instituted against the
said firm, claiming five per cent. of said profits
as compensation for my services as clerk, in ad-
dition to eight hundred dollars per annum
already received by me.

(Signed,) THOMAS S. HIGGINSON.

The following, purporting to be a copy of a
letter addressed by plaintiff to defendants, was
produced and filed by the plaintiff:—

MONTREAL, 5th, April 1857.

Messrs. Lyman, Savage & Co., Montreal:

DEAR SIR,—In reply to yours of the 4th inst.,
the present is to say that I accept your offer of
two hundred pounds per annum and five per
cent on the profits of your business for two
years from this date, after which you are to
admit me as a partner upon terms mutually
satisfactory.

Yours truly, (Signed,) T. S. HIGGINSON.

P.S.—My name, of course, to appear in the
firm.

The questions referred to the Jury by the
Court of Appeals were as follows:—

1. Did the Defendants, as a commercial firm,
contract with the Plaintiff to admit him as a
partner, in manner and form, as set forth in the
declaration?

2. Have the Defendants refused to admit the
Plaintiff as such partner?

3. Did the Plaintiff, between the 4th of April,
1857, and the 4th of April, 1859, co-habit or only
with a woman of profligate character, and did he
maintain her in a state of prostitution?

4. Was the Plaintiff bound to remain upon
the premises in charge during the night time?

5. Did the Plaintiff, during the said period of
time, absent himself from the Defendants' store
at night, in order to pass his time at brothels?

6. Did he introduce women of bad fame into
the said store within the said period?

7. What is the Plaintiff's general character,
and is he a person of irregular morals and dis-
credible conversation and repute?

8. Did the Plaintiff suffer any damage by
reason of not being admitted into the said firm
as a partner? If so, at what sum do you assess
the damage?

THE JUDGE'S CHARGE.

The Hon. Mr. Justice B. LEY said:—

The magnitude of the amount demanded, and
the importance of the legal points involved,
compel me to extend my observations somewhat
more than I had originally intended in charg-
ing the Jury in this case. The action seeks the
recovery by the Plaintiff of £6,500 for damages,
said to be suffered by him by reason of the De-
fendants' refusal to admit him into their Co-
partnership firm of Lyman, Clare & Co., as
dealers in drugs, &c., at Montreal and elsewhere
in Canada. The declaration sets out that by a
paper writing, dated the 4th April, 1857, written
on behalf of the Defendants, by Benj. Lyman,
one of the Defendants, and senior partner of the
firm, and signed with the co-partnership name,
the Defendants agreed to his admission as a
partner in their co-partnership, which should
be permanent and continuous, alleges the
Plaintiff's refusal of advantageous offers in con-
sequence, states his good business capacity,
his refusal to admit him although often re-
quested, and his privation of profits and advan-
tages from so large and profitable a business,
becoming more extended from the 4th April,
1859, estimates the value of his share at
£6,500, and concludes that by means of their
refusal to admit him into their co-partnership, he
has been deprived of profits and advantages
from that co-partnership business to the amount
of £6,500, which he claims with interest and
costs of suit.

The action is therefore based upon this alleg-
ed contract made by one partner, as an abso-
lutely binding agreement upon his co-partners,
for the admission of the Plaintiff into their co-
partnership.

The issues raised by the Defendant's pleas, are:

1st. Their denegation of such an agreement.
2nd. Their exemption from such agreement
of their partner, being without their consent or
participation; and

3rd. Hypothetically their relief from such
agreement if it existed, by reason of the Plain-
tiff's mis-conduct.