

# SUPERIOR COURT.

## EVIDENCE TAKEN FROM THE RECORD.

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1860  
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THOS. S. HIGGINSON, PLAINTIFF,

vs.

BENJAMIN LYMAN *et al.*, DEFENDANTS.

BEFORE MR. JUSTICE BADGLEY AND THE FOLLOWING SPECIAL JURY:—

1. THOMAS JAVERHILL,
2. JOHN W. MCGOVAN,
3. PETER DONNELLY,
4. DAVID DUNCAN,

5. WALTER MCFARLANE,
6. JOHN MURPHY,
7. ANDREW G. HOLLAND,
8. ROBERT HUTCHESON,

9. ALEXANDER AULD,
10. GEORGE STARKE,
11. PATRICK BRENNAN,
12. THOMAS GORDON.

The evidence adduced at the trial in this cause on the 13th and 14th days of November last, was as follows:—

### PRODUCED BY THE PLAINTIFF.

The first witness, BENJAMIN LYMAN, one of the defendants, deposed:—On the 4th April, 1857, the firm of Lymans, Savage & Co., was composed of myself, Henry Lyman, and Alfred Savage; I was then senior partner. On that day I addressed a letter to plaintiff on my own responsibility, and at the time told plaintiff so; on that occasion I wrote the name of the firm. I told plaintiff I only expressed my own feelings and which might not be agreed to by the firm. He replied he thought they would. Plaintiff had asked me what I intended to do for him, and I told him I had always intended that he should take Mr. Savage's place. I approved of his qualifications for business, and believed him to be one of the most perfect young men in Montreal. I told him my brother Henry had a good opinion of him, and that Mr. Savage had frequently expressed, in fact, on several occasions, his opinion that his conduct in business was very excellent. Mr. Savage had, before this, expressed his wish to be released, a year before the expiration of the partnership, which was for five years, on account of ill health. Plaintiff asked me to give him in writing what I intended, and I gave him the letter of the 4th April. This was written at time of his conversation with me (witness.) I did not receive any letter from plaintiff of date the 5th April, 1857. I did not see such a letter lying on the office desk. The firm did not, to my knowledge, receive such a letter. I never read such a letter or saw it or heard of it till a day or two ago, when my lawyers showed me a copy of it. In the conversation with plaintiff on the 4th April, 1857, money was spoken of. The firm received from plaintiff a thousand pounds a few days after the conversation. The circumstances

were these: At the time the letter was written, plaintiff said he should be soon in receipt of money from the sale of land by his father, which he would like to place at interest. I said to give it to Mr. Clare and the firm would pay 8 per cent. The terms of the letter written were complied with by the firm, i. e., so far that the plaintiff received £200 a year and 5 per cent on the profits of the business for two years. Plaintiff had been in our employ for seven or eight years. Plaintiff was to receive the money so by him lent, on call. He never called for it, but I received a lawyer's letter demanding it, and the firm was sued for it before they got a chance to pay it; the firm gave a *bon* for the money. It was paid after the action was issued. The money remained with the firm for about two years at 8 per cent. When the money was given, the firm was not in difficulties at all. After the letter was written, plaintiff remained in the employ of the firm for two years. It was some time in the summer of 1857 that we first had some suspicions of plaintiff's morality. I wrote plaintiff from Toronto on the 1st April, 1859; letter now produced; I believe an answer was received by me to that letter on my return from New York. I cannot swear whether I did or did not reply to that answer of plaintiff's. The letter of the 16th April, now produced, was received by the firm from plaintiff. The letter of the 28th April, also produced, was received by the firm from plaintiff. The letter of the 30th April, now produced, was received by the firm from plaintiff. I believe the figures 1857 are wrong, and should be 1859. On the 2nd May, 1859, the firm wrote to plaintiff the letter now produced. I wrote that letter, and signed the name of Lymans, Savage & Co. The letter of the 3rd May, 1859, is in plaintiff's handwriting, and by him signed. The firm received that letter. The letter of the 16th April, 1859, was written and signed by me. I do not know of any other cor-