

be attained as if the conduct of one of the partners casts discredit upon the partnership *si ita injuriosus aut damnosus socius sit ut non expediat eum pati* also Pothier 152, 2 Troplong 983 who says "judges should notice the changes which destroy that harmony which is necessary for the prosperity of the partnership, they must consider the personal habits, the disposition, the character whose influence of no consideration in other contracts, is so great in this marriage or union of civil and commercial interests. Union gives them strength, but discord ruins the best formed enterprizes; discord among co-partners is then a serious cause for the dissolution of their partnership: the same result follows from every thing that shakes the confidence placed in the personal qualities of a partner charged and intrusted with a part of the partnerships action. The mutual confidence of partners among themselves respectively is the true link of the contract of co-partnership. That the partners who shall have become a gambler, a dissipated, *prodigue* spend thrift and he whose ill conduct unknown at the time of the contract but since then revealed would occasion serious apprehensions as to his administration of the co-partnership. "So also Deverger p. 393, 575"—La confiance &c., personal confidence is the basis of the contracts of partnership. If the conduct of a partner be such that this confidence can no longer subsist in the minds of his co-partners, *ex gra.* if he commit repeated faults a dissolution of partnership may be demanded against him. He promised to be careful and honest, he fails in his engagements, his partners are discharged from him. It is not from their intercourse with each other alone that the morality of partners is to be appreciated, acts and matters foreign to the co-partnership business which might take from one of them, the consideration which he enjoyed at the formation of the partnership, will justify a demand for its dissolution. Who would condemn honorable and reputable men to the penalty of a perpetual contract with a man stigmatized by judicial condemnations or by public opinion. The gravity of the facts, the nature and frequency of the intercourse required by the special character of the contract of partnership should be weighed by the judges and if they consider that the partnership bond has become insupportable from the fault of one of the partners who formed it, they will order it to be dissolved." It would be poor sophistry to deny the applicability of these authorities to the case in hand simply because they refer in terms to existing partnerships; they apply as well to contracts of co-partnership about to be entered into, and justify the defendants if justification were needed, that the plaintiff's conduct before his entry into the co-partnership would be a fair sample of what it it would be after. But we are left in no doubt upon the effect of the law, inasmuch as the Court of Appeals has itself settled the special questions suggested for your answers and has given to them a legal significance and purport that cannot be contradicted or diminished. You have the case before you in the fact of an old and long established firm having had a young man in their service for a considerable period of time. Upon his natural application to the senior partner, who appears to have entertained a strong personal regard for him, to

know what he proposed to do for him, the partner stated to him his own views and feelings towards him and which at the request of the applicant he put into writing and as it happened signed the writing with the partnership signature, but intimating at the same time that he had not the sanction of his co-partners, the Plaintiff's other employers,—which the applicant was to obtain. The writing secured an increase of salary from £150 to £200 per annum and 5 per cent on the profits of the business at Montreal, and proposed his admission into the firm after two years upon terms to be settled. No knowledge by Mr H Lyman and Savage of this proposal, until the rupture had occurred, or acquiescence in it by them either by word or act at any time is in evidence; the law invalidates this unauthorized proposal of one partner and nullifies the partnership signature subscribed by him, thereby relieving them and the firm from any liability or responsibility towards the Plaintiff for the nonfulfilment of the agreement by reason whereof he claims damages for loss of profits and advantages from the business of the firm. But what profits? Of those of a partnership at will which has not existed at all and which if it had existed any partner might dissolve at his pleasure, or refuse to carry it into effect if only intended to be established, or those of a limited partnership brought to dissolution by the misconduct of any of the co-partners. In this case there is no partnership at all, no privity of contract between the Plaintiff and the Defendants. He was no partner in their firm, had no control or right in its management, nor under any responsibility for its engagements or losses: in fact there is neither a contract nor agreement between them nor foundation for a claim to damages against them and therefore if profits be the measure of damages, no profits in the business of the firm for his participation or distribution. The Plaintiff's case is one of not frequent occurrence at law, that of a person contracting with one without authority he must himself bear the result. Under this view of the case there can be no assessment of damages against the Defendants.

Before I close this case, it is proper to refer to one or two circumstances that have been mentioned in the course of the trial; but you must bear in mind that in coming to a decision upon the points to be submitted to you that the reckless assertion of counsel, their suppositions or beliefs are not to be taken as proof, and though they may move feelings, the rights of parties are to be decided upon the evidence adduced before you. The counsel in stating his case represented the paper writing first as a proposal for agreement, you must be reminded that if it was so, by his own shewing it is not an absolute contract in itself, and secondly he represented it as only entertaining a proposal for an agreement,—in this case the law requires it to be accepted; in the former case, it is no contract and cannot support damages, in the latter the acceptance being not proved cannot support the action. It has been asserted that there has been error in the ruling rejecting the testimony of Duval, there is none in fact, but if there were it is not matter for the Jury to pass upon, the testimony rejected was not testimony in rebuttal of the defendant's evidence. The evidence of Turnout, a witness for defendant, has

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