

plementary tender on the most advantageous terms that could be got, and to telegraph to McDonald if necessary. The plaintiff lays stress upon the fact that at this stage in the proceedings, the defendants without his or his co-partners' knowledge, gave directions that the answer from the department was to be addressed to Moore, Wright & Co., Portland, Me., and that they somehow got wind of this gentleman, Peters, having the best chance of obtaining the contract; and the fact or the theory upon which the present action is based, is in short that the defendants showed Peters the figures of their tenders so as to enable him to get the contract, and share the dredging with them, cutting out the plaintiff and his co-partners from all participation: That is to say, the plaintiff maintains that while the partnership between himself, McDonald and the defendants still existed, they, the defendants, betrayed the confidence placed in them by their co-partners, and got for themselves alone what all were equally entitled to; and he therefore brings his action of damages for this violation of an essential condition of this as of all other partnerships; and he lays his damages at \$25,000 — measuring them by his share of the supposed profits.

The plea admits the tender and the supplementary tender, and then sets up substantially that the tender made by the defendants and their co-partners was not accepted, and they became perfectly free after its rejection, to take a sub-contract under Peters who got the contract from the commissioners; and that though they appear as co-partners of Peters, that course was taken at the suggestion of the commissioners or engineers to facilitate direct payment to them instead of their being paid through Peters; and they deny all imputations of fraud or false dealing towards the plaintiff and McDonald, adding that though they were not at all held to do so, they actually invited the plaintiff and McDonald to join with them in their sub-contract, but never got their answer until after they had completed their arrangements with Peters, when it was too late to make new ones with the plaintiff or McDonald.

Now I have said that the correspondence and the evidence are very long; but it is obvious that there are only two points upon which the case rests:—

1st. The fraud and false representations to

the harbour commissioners charged against the defendants;

2nd The duration of the agreement as to the tender.

Of course the second depends in great measure upon the first, for if the rejection of the tender made by plaintiff and his associates was the consequence of fraudulent representations by the defendants as charged in the declaration: If they, the defendants, gave the commissioners to understand that they and their associates had withdrawn; if they gave Peters the figures of their tender so as to facilitate his getting the contract, and with a view to their own benefit to the exclusion of their associates; in one word, if they themselves are the cause of the rejection of their own tender for their own personal profit, and to get an advantage over their co-partners, they may be said to have got for themselves what ought to have been got for the partnership, and to have got it improperly—so that they cannot profit by it at the expense of the others.

There can be no doubt that the position of the defendants is impregnable if it is true. If the tender of the plaintiff and his co-partners was *bonâ fide* rejected, there was an end of the objects of the agreement between them. The plaintiff does not deny this. He admits that the defendants would have had perfect liberty of action after the rejection of their common tender, if that rejection had not in fact proceeded from them, and been suggested for their own individual objects in violation of the rights of the other parties; but he puts his case on the distinct ground of deceit, and consequent profit made by breach of the partnership agreement. I have paid every attention in my power to the evidence, and to the arguments adduced from the correspondence. There was something perhaps to excite Mr. Kane's surprise and even suspicion, until it was explained; but I must say that I feel the weight of evidence is with the defendants. The plaintiff appears to have acted in the most honorable and confiding manner throughout: to have done all that could be expected of him as one of those who tendered—in the way of exerting himself to the utmost for the benefit of those associated with him, and was no doubt disappointed at the result; but it is impossible to condemn these defendants for having withdrawn