

and positively brought home to all the other partners in order to bind them.

The introduction of a third person into a firm is a contract with each of the partners to which each must consent individually, and it may be said that there are as many contracts as there are partners. Nor will the approbation of the managing partner alone suffice, nor is the mere knowledge by the other partners of the act of their partner sufficient. Knowledge is not acquiescence nor can any legal inference in support of their partners act be drawn or allowed from their knowledge or their silence upon the subject during the interval until the time of when the contract might be expected to take effect. Acts and words may be sufficient to constitute a co-partnership contract when they are those of all the partners and shew an acceptance by the partners, therefore, to bind them. Evidence of this acceptance is required. 6 Madd: 5 Jac. 284. If the contract attempted to be enforced against a firm, in its inception secured their sanction and countenance, the joint obligation attaching upon them to perform it is plain and manifest as a general principle. Each member is necessarily presumed to participate in the expected or resulting benefits of such a contract, and to countervail that advantage, the joint duty obliging them to fulfill it, is imposed: such an engagement by the firm in no respect differs from that of a single member the only difference is in the number of the parties, the consequences and responsibilities which ensue upon a breach of it are precisely the same, but where the inception of the contract was unknown to the other partners who rejected it upon the arrival of the period when it was to take effect, and no evidence of their acceptance shews, their responsibilities are their own, and whether the other partners be many or few, they are in no way compelled to fulfil what they have not sanctioned. It has been argued that the payment of the 5 per cent on the profits here allowed to the plaintiff during the two years mentioned in the proposal of agreement, is a sanction of it by the other partners. The circumstances attending the inception of that matter are within your recollection; the charge was unknown to the other partners until after the rupture—it was never entered in the partnership books until after the event. Mr. Clare, the book-keeper, was not aware of it, until on being required to make out the plaintiff's account after the rupture, the latter, for the first time, objected, because the 5 per cent had not been credited to him: he never previously had objected to the entries in the books to his credit, although he had free access to them. Moreover, so far from acquiescing in this charge, the other partners immediately compelled B. L., the proposing partner, to charge himself with the sum received by the plaintiff in discharge of that claim, because he had proposed it without their sanction, and further, it was not paid until 1860. The payment of the 5 per cent is no proof of the sanction of the defendants and does not bind them or him. Upon this issue how stands the case—the paper writing produced by the plaintiff shews it to lie the act of the writer, B. L., alone, who, on plaintiff's application, proposes to him a continuance of his service with the firm for two years at an increased rate of wages—

instead of £150, £200 per annum with 5 per cent on the profits here, that is in Montreal, after that time the writer proposes to plaintiff his admission into the firm upon terms to be agreed upon and to be mutually satisfactory. This was to take place after the two years: this proposal had never been communicated to the other partners, Mr. H. Lyman or Mr. Savage, either by B. L., or what is more strange, by the plaintiff himself, until his demand of admission into the firm, although B. L. informed him he had not his partners' sanction for making the proposal. Until that time there is no approach to evidence to even to their knowledge of this proposal, much less of their acceptance of the agreement or the acquiescence in it by either of them by word or act—the plaintiff is not only silent upon this important subject with the partners, but he is equally so with Mr. Clare—there is no proof of his having done, or been concerned in any partnership act which the co-partners had adopted, or of his having been considered by them in any other quality than their clerk and manager as before the rupture. The law refuses to compel non-consenting partners to submit to proposals of this character, whilst it denies to the partnership signature subscribed by one partner for objects beyond the scope of the partnership business, and mandate any effect whatever—no general procuration, however large, could validate it. Take away from this case the assumed power of one partner to bind his co-partners in this matter, and remove any legal responsibility which could be supposed to have arisen from the use of the partnership name to the abuse of the partnership mandate, and it will be manifest that you cannot fail to perceive by a recurrence to the plaintiff's testimony in support of his case in chief, that there is no case for you, this issue is clearly against the plaintiff. To maintain it in his favor would be against law, as it would be against principle, it would give rise to contentions subversive of a co-partnership system altogether—it is my duty to state this to you who are commercial men, engaged in commercial pursuits and possibly some of you connected with partnerships, for your consideration. The law has settled the point as I have endeavoured to explain it to you and it ignores all acts such as this of individual partners upon the responsibility of co-partners, either as to all or any of them; hence it necessarily follows that if the agreement were perfect which it is not, no responsibility in the plaintiff's favour is cast upon the firm of Lyman, Savage & Co. or upon the defendants as partners of that firm by the act of B. Lyman.

Upon these two main issues, the plaintiff must rest upon his own strength for success; as regards the plaintiff there is nothing to support the case either in evidence or in law. I had hoped to have discharged you yesterday at the close of the plaintiff's evidence; had the defendants then moved for a nonsuit I should not have hesitated to grant the application but although the legal aspect of the case since then is quite unchanged, subsequent proceedings have been adopted which now compel me to submit to you, the third or hypothetical issue together with the law affecting it. It is not my purpose at present to detail the evidence adduced on this part of the case, it must be still in your recollection, and I shall therefore confine myself to remark that it appears to sustain the

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