

not, to my knowledge, receive such a letter. I never read such a letter or saw it, nor heard of it till a day or two ago, when my lawyers shewed me a copy of it."

The letter here referred to, and of which an alleged copy is produced, is in these words:—

"MONTREAL, 5th April, 1857.

"Messrs. Lyman, Savage & Co., Montreal:

"DEAR SIRS,—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 time you are to admit me a partner, upon terms mutually satisfactory.

"Yours truly,

"T. S. HIGGINSON.

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

Had proof been offered that this letter had been written on the day it bears date, or about that time, and that the firm had then received it, such a formal acceptance, it must be conceded, would have had a very serious significance in the present case, but as a matter of fact the Court does not find in the evidence adduced any proof that such a letter was ever written at the time it purports to bear date or at any time during the two years, or that it was sent to, or received by the firm of Lyman, Savage & Co., or Benjamin Lyman, and we look in vain for any other testimony to shew that the Plaintiff formally or expressly accepted the proposed offer of Benjamin Lyman to become a partner in the firm, before the expiration of the two years. It is quite true that he remained in the Defendant's employ—received the £200 per annum and 5 per cent upon the profits. It results clearly from these facts that so far he did accept the offer, and it may be urged, with some appearance of truth, that the acceptance and compliance with part, was, or was equivalent in fact to, an acceptance of the whole. The jury, no doubt, thought so, and that so far as it was a contract, it was completed and rendered binding upon both parties, and the Court is of opinion that in so far as the acts of Higginson tend to prove an acceptance of the whole contract by him, the proof of these acts was evidence to go to the Jury and that it was their duty to appreciate that testimony. It would be going too far therefore, to say that there is no proof of the acceptance by Mr. Higginson of Benjamin Lyman's offer of co-partnership. Assuming however, that there was the tacit acceptance contended, for it could only be such in regard to Benjamin Lyman unless it be proved that the other partners were aware of the letter of the 4th of April, 1857 written by their partner Benjamin Lyman and of the offer of 5 p c't on profits and of the prospective partnership therein contained. It was urged in argument by Higginson's counsel, that we must infer or presume the other partner's knowledge of the offer of partnership and of the 5 p c't profits from the fact that the plaintiff's salary was raised to £200 per annum after the 4th April, 1857, and that he remained in their employ during two years. Now the Court is of opinion that even in the absence of all evidence to the contrary, we could presume no such thing. No legal presumption or inference of fact could arise here and for this simple reason:—

The engagement of Mr. Higginson, by the senior partner, for two years at £200 per annum bound the firm—their acquiescence was not necessary—they, as a firm, were bound in law to fulfil that engagement. If this part of the contract required their ratification, and they had ratified it by paying him £200 a year, a presumption might arise that they had ratified the entire engagement. There is an obvious distinction here, and one we must not lose sight of. The Court must, as a matter of law, regard this engagement to pay 5 per cent on the profits and the offer of a partnership separately from the hiring of the plaintiff for two years at £200 per annum, and suppose, as we must in examining the force of presumptions, and the applicability of evidence, that Mr. Benjamin Lyman had offered without the sanction of the firm, 5 per cent on profits and a partnership alone, would complete silence and inaction upon that engagement, raise a presumption in law or in fact that the other partners had ratified the engagement? Assuredly not. And the Court is of opinion that this is undoubted law, even if they were aware of such an agreement having been entered into by their partner. Silence and inaction during the period prior to the time when the contract was to take effect, is not, in a case like the present, a ratification of the contract; and no presumption of acquiescence is legally deducible from such silence and inaction, even if they were aware of the existence of such an engagement. But let us enquire a little further into this matter and examine the evidence touching their knowledge or ignorance of Benjamin Lyman's letter of the 4th April 1857. And first as to the 5 per cent, respecting which a good deal has been said. This credit of 5 per cent to plaintiff was never entered in the books. Mr. Clare the book-keeper says he became aware of it only in May 1859. The charge was made in the books of the firm in 1860 and was then charged to Benjamin Lyman because the other member of the firm objected to it. Benjamin Lyman says, "The first entry made in the books of the firm with reference to the 5 per cent was made in 1860. His partners knew nothing of it till about the time that plaintiff demanded to be admitted into partnership and was refused. The firm was sued afterwards for the 5 per cent. After suit I and Mr. Clare made up the amount to the best of our ability, and we decided that if the amount was not accepted, the plaintiff might go on with his suit. The amount \$1,200 was accepted by the Plaintiff and was charged to me individually on the ground that I had promised it to Plaintiff without my partners' consent, and that they were not responsible."

It will be remarked that the payment of 5 per cent was made by Benjamin Lyman himself, on the 18th May, 1860, after the action was brought, and appeared then for the first time in the Defendant's books and to the debit of Mr. B. Lyman. That his partners were ignorant of his engagement to pay the 5 per cent till then, and they then disavowed his act. This testimony corroborated as it is by Clare and by all the circumstances relative to this charge of 5 per cent as proved, is, in the opinion of the Court, conclusive: unless indeed we discard the whole statement as a tissue of falsehoods from beginning to end, which nothing in the

character justify.

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