

tion of evidence, we of that evidence if it adduced in support of as he has presented. The Plaintiff claims from the breach of an into by Defendants, as him into partnership. That amount of dam- deprived of profits and on resulting from a most extensive es- Canada." By their the existence of any even if any such con- by them (which they worth what they consi- that Plaintiff had ifsition on their part

Issue being joined, by the Court to the and it is obvious that, the Plaintiff's case the Defendants, as a with the Plaintiff to manner and form al-

ry answered unan- and it is their find- of it I have now to untend that this part sustained by evi- it is contrary to e cause.

t of their motion is ced at the said trial as, as a commercial Plaintiff to admit and form as alleged And their sixth

und each and every w and to the evi- writing referred to as embodying the Benjamin Lyman, the Lyman, Savage & the form of a letter the Plaintiff. The ter are as follow: 4th April, 1857.

e conversation the sent is to say that say two hundred ive per cent on the ed on here for the me we will admit e will be mutually

private and confi- VAGE & CO."

t upon which the l now to enquire. The testimony at to this paper, is

was senior partner & Co. On that intiff on my own 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. Plaintiff asked me to give him in writing what I intended, and I gave him, in writing, the letter of the 4th April. This was written at the very time of his conversation with me. After the letter was written Plaintiff remained in the employ of the firm for two years."

In cross-examination, he says:—

"The letter of the 4th April, 1857, was written in Plaintiff's room, in the store when I was taking my luncheon. I told him I had not the sanction of my partners, and he said if they did not consent it would go for nothing. Plaintiff said he thought I could induce my partners to come into the arrangement. I had not the sanction of my partners. The first time I told my partners that I had written such a letter was after I wrote the letter of the 1st April, 1859."

As a matter of fact resulting from this evidence which is precise and direct, and is uncontradicted by any other testimony of record, but, on the contrary, is corroborated by the very terms of the letter and other circumstances, it is manifest and so manifest as to leave no doubt whatever, in any reasonable mind, that this letter was written without the knowledge sanction or authority of the other co-partners, Henry Lyman and Alfred Savage. This fact being thus legally and conclusively established, the rule of law applicable is plain. The two other partners were not bound by this letter, unless they became so by subsequent ratification. This is beyond controversy, and therefore requires no comment or citation of authority. A few legal maxims dispose of this part of the case. It is admitted that each partner is the general agent of the firm, for all purposes connected with the partnership. He may therefore dispose of the whole, or any part of the personal property belonging thereto in like manner as if he were sole owner. So all transactions by a partner, as agent of the firm, will bind the firm. The contract of co-partnership is consequently one of the most important known to the law. Hence it is that the express and unequivocal consent of all the other partners is required in the admission of new members. As between the partners therefore it cannot be created by mere operation of law, but depends solely upon the fact of agreement. No third person can be introduced, by one or more partners, into a firm, but with the consent express or intelligibly implied from acts, unequivocal in their nature, of all the other parties. This is the law, and bearing this principle in mind, we have to enquire, whether evidence has been placed of record proving a subsequent ratification, of this act of Benjamin Lyman, by the other partners, or not. If such ratification be proved, the verdict of the Jury so far is good; if, however, there be no evidence whatever, or evidence to the contrary, the verdict in this particular finding, is bad. Before proceeding further, however, in this enquiry, it is right, that the Court should examine the evidence in regard to another important point in this case; and that is whether it be proved, by any kind of evidence whatever, that this offer of partnership was ever accepted

by Mr. Higginson in a way to make that acceptance known to the firm, or in any way to bind him or the firm? It will be recollected that the letter written by B. Lyman bore date the 4th April 1857,—and it is pretended that the plaintiff answered it by a letter dated the following day, that is the 5th April 1857—this may or may not be true—the Court is not called upon to discuss moral probabilities, or to appreciate the value of conflicting presumptions, which escape the ingenuity of legal argument, but as a matter of fact there is no proof whatever adduced to prove that this letter of the 5th April 1857 was ever written, was ever sent to, or received by the firm of Lyman, Savage & Co. or even Benjamin Lyman himself. A young gentleman by the name of Spence was examined by the Plaintiff to prove that such a letter of acceptance was written, and his own words will demonstrate the value of his evidence in this particular. "Knew Plaintiff in 1857—Knew of his receiving a letter from Defendants. Plaintiff brought the letter to witness, who saw a draft of the reply in 1857, shortly after he first saw the said letter from Lyman, Savage & Co. Witness saw Plaintiff in the store on Sunday, and Plaintiff said 'there is my answer to their letter lying on the desk.' This was shortly after my seeing the letter to him from Lyman, Savage & Co."

Cross-examined:—"Plaintiff showed witness the draft of his reply shortly after his receiving the original letter. Cannot say how long after. The letter I speak of as having been pointed out to me by Plaintiff was pointed out on Sunday. None of the firm were present, nor any in the employ of Lyman, Savage & Co. Plaintiff had the key of the premises and was apparently in charge of them on that day. Witness did not read the letter lying on the desk, but has read the copy shewn to him by Plaintiff. It was pointed out by Plaintiff as being the letter. To the best of his knowledge it was the Sunday after the 5th April, 1857, that witness saw the letter lying on the desk, that Plaintiff pointed out to him."

Mr. Spence says he never read the original but has read the copy shewn to him by plaintiff. Both parties seem to unite in speaking highly of the character and credibility of this witness; and, therefore, giving the fullest weight to his testimony, I am bound to say that there is no positive or legal evidence whatever of the existence of this letter of acceptance. The most that can be said is, that there exists a presumption that such a letter was written as Mr. Spence's evidence seems to imply. But this presumption is refuted by the testimony of Mr. Clare, book-keeper of the firm, and of Benjamin Lyman. Mr. Clare says:—"As book-keeper witness had access to all books and letters to or from and of the firm. Was constantly in the office. Witness never heard of the letter of date the 5th April 1857. Never saw it. Only heard of it a few days since. Had such a letter been left lying on the office desk, witness would certainly have seen it. He thinks he would have seen it if lying as Mr. Spence says. It is his business to put away papers. As they accumulate they are filed away."

Mr. Benjamin Lyman says:—

"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