

service at £200 per
on the profits here,
—that he had sus-
tained in the summer of
1859 produced, states
at £75,000 per an-
nuum of a letter from
accepting his propo-
sition that the £1000 was
a loan on call at in-
terest only called by a
sure with the Plain-
tiff on the 1st April, 1859.
red in the books of
it was unknown to
plaintiff's demand to
partnership. £300 was
for that claim and
Lyman's private ac-
count by him without
partnership spoken
late Wm. Lyman,
could not succeed,
could have had the
share at £200 per
plaintiff, and at his
made up by the
directed by witness
Lyman's departure
plaintiff with the
to notify the Plaintiff
previous to 1859,
at the 5 per cent, for
brought. The lat-
est account of profits
Admits the good

having seen the
about that date
kept it in his pos-
session. Plaintiff had pro-
posed with the late Wm.
Lyman to speak to
on—a connection
with Mr. Carter,
and with his house-
hold in writing,
£1000 paid over to
was held by the
5 per cent on the
profits and partly his

Lyman to have
of Medical Hall
largest of the kind
a years profits,
that is wholesale
of Wm. Lyman's
and to pay £18 to

offers made to
Lyman, and advised
not see the letter

Lyman's letter and
shortly after his re-
signed Lyman's
defendants store,
the letter, Plaintiff
his letter lying on
a copy, draft of
it, none of De-
fendants any one in De-

defendants employ. Plaintiff had key of the
premises and apparently in charge of them.

Mr. Lamplough estimates the good will of
defendant's business at from £8,000 to £10,000.
With this evidence such as it is the plaintiff
closed his case. The evidence advanced by the
defendants refers mainly to the defendant's con-
duct in connection with a woman named Martha
Scott, his nightly and untimely absences from
the defendants premises of which he had charge
and in which he had an apartment provided
for him to sleep at night—his visits to houses
of ill-fame and his connection with the woman
above named. It is unnecessary at this time to
detail this testimony with more particularity; it
will be fresh in your recollection and you will
be able to supply omissions; it may be ob-
served however that it is of a positive and direct
character, that O'Leary's testimony stating
Savage's application to him on the 28th May
1857, with reference to plaintiff's conduct is
confirmatory of the testimony of Benjamin
Lyman as to the suspicions of the firm against
the plaintiff in the summer of that year and
whilst in their employ. As to the evidence of
Mr. Clare, the material parts shew that plain-
tiff never spoke to him of his partnership with the
firm—that the letter of the 5th April 1859 was
not seen by him, that the £1000 was a loan on
call at 8 p. c., offered by the plaintiff himself
and that plaintiff had a sleeping apartment in
the premises, without charge, and had charge
of the premises that the two Messrs. Lymans
had each a key and the plaintiff the third one,
that plaintiff had ready access to the books,
made no complaint in regard to his account
until about the time of his departure on the 4th
May 1859—states the annual profits from 1855
to 1859 both inclusive to average about £4,000
or £5,000 per annum—subject to bad debts—
Large increase of business since 1859—states
plaintiff's absence on the business of the firm for
3 months in 1855 and two days in 1856. Cannot
swear if his sleeping apartment was occupied
by any one else during plaintiff's absence—would
have seen the letter spoken off by Spence if it
had been lying on the desk. The £1200 paid to
plaintiff for the 5 per cent. claim was charged
to B. L. on account of refusal of other partners
to allow it &c. The balance of 1858 was made
up to 1st January in May or June of that year—
that of 1859 is not yet made up.

The evidence of the defendants was closed
and the plaintiff adduced evidence in rebuttal of
the defendants evidence. B. L. was again brought
forward to establish the plaintiff's intimacy with
his family. Darling proves the plaintiff lodging
several times at the Ottawa Hotel in latter part
of 1858-1859. Lee and Renaghan as to character
of Turnout, a witness of the defendants. Thomas
Higginson the plaintiff's father was intimate and
friendly with defendants. Never was told by
them of his son's conduct until after the rupture—often visited by plaintiff at the Ottawa
Hotel, when witness and wife came to town,
and that they visited his son at his room at the
store but not late at night. Other evidence
was offered but not being in rebuttal was re-
jected. With this evidence for the defence which
has been gone over cursorily including that
of Mr. B. L. of which latter the plaintiff avails
himself under the statute, it will be for the jury
to render their verdict upon the suggestions
submitted for their consideration. It is proper

to observe that the statute has introduced no-
thing new in the matter of the examination of
a party except the mode of it—under the former
law the party was examined upon interroga-
tories, now by the statute he is examined and
cross-examined as a witness, but as to himself
the result is the same by both laws, he cannot
turn his evidence to his own advantage. It is
proper to premise in *limine* before stating to
you the law of the case, that both judge and
jury have particular duties to perform in such
cases as this. Their respective provinces are
sufficiently distinct to enable both to keep apart
from each in their respective functions. In a
general way it is the duty of the judge to point
out to the jury any rule of law which either
renders evidence necessary or gives peculiar
weight to one species of evidence or defines
the manner in which a certain fact must be
proved. He should also distinctly explain to
the jury, what principles of law are applicable
to the point in issue, and in order to enable
him to do so correctly he must distinguish
questions of law from questions of fact. In mat-
ters of contracts, the construction rests with
the Court alone. On the other hand it is the
duty of the jury to take the construction from
the Court either absolutely or conditionally ac-
cording as the words of the contract and the
surrounding circumstances require or not to be
ascertained as facts by the jury. In matters of
law also it is scarcely necessary to observe
that juries must take the law from the
judge and not from their own opinions; unless
this were so there would be no certainty in the
law, for a misconstruction by the Court is the
proper subject for redress by a higher tribunal,
such as a Court of Error or Appeal but a miscon-
struction by a jury cannot be set right at all
effectually. Bearing these observations in mind,
it is my duty to state to you the law in connec-
tion with the issues and evidence of record. It
will be in your recollection that there were
three issues noticed to you upon the pleadings
filed in this cause. 1st. The absoluteness or
imperfection of the agreement relied upon by
the plaintiff. 2nd. The legal power of one partner
of a firm to introduce a person as a partner
into the firm without the sanction of his co-
partners and 3rdly the dissolution of an exist-
ing co-partnership or of a contract for the for-
mation of one by the misconduct of an actual
partner or of the intended partner; this last
issue is hypothetical. As subsidiary to these it
may be necessary to advert to the legal means
required for establishing the damages demanded
and sought to be recovered.

As before observed the Plaintiff relies upon
an absolute agreement, between himself and the
Defendants as co-partners under the firm of
Lyman, Savage & Co, which is in the follow-
ing terms and must be taken in its own words
as they are on the face of this instrument itself,
and not as it appears in the Plaintiff's decla-
ration. (The agreement is read.) It may be
at once observed that no legal evidence has been
adduced by the Plaintiff of his acceptance of
this agreement. The copy of a letter dated the
5th April, 1857, seen by Mr. Spence as he says
shortly after the Plaintiff's receipt of the al-
leged agreement and the Plaintiff's pointing to
a letter lying on the office desk and saying
"there is my answer" are not in themselves proof
of the existence of the original letter under