

large business to attend to, and I desire, therefore, to know if it is the intention of the learned Counsel to examine him, and if so, I pray the Court that Mr. Gilmour be examined at once.

Mr. HOLT did not admit the right of the learned Counsel to lay out a course by which he (Mr. H.) should conduct his case. He might, or he might not, examine Mr. Gilmour; at any rate, it did not suit his convenience to begin with that gentleman, and he expected that he (Mr. G.) would be at hand when called.

CARON J.—The defendant should be called now and his appearance recorded, but as he is nothing more than one of the plaintiff's witnesses, and may be examined or not according to the pleasure of her Counsel, I cannot direct that he should be allowed to answer now.

GEORGE RAILTON, of Quebec, Manager of the Quebec Water Works, was called and sworn

*Examined by Mr. Holt.*—I know the defendant in this case. I do not know the Plaintiff. I consider the Defendant, Mr. Gilmour, as one of the leading merchants in Canada, and believe his means to be very large. I have been in the employment of Messrs. Allan Gilmour & Co., of which firm he is a partner. The defendant made allusion to the plaintiff in a conversation which he had with me some time between Christmas and February last. I cannot speak positively as to the day.

[The Counsel for the defendant here objected to the admission of evidence respecting any conversation which did not take place on the day laid in the declaration, namely, 1st May, 1852. His objection was overruled by the Judge, on the ground that supposing the words charged to have been used, the particular day on which they were uttered was not material.]

*Examination Continued.*—I cannot charge my memory with the exact words which Mr. Gilmour used on this occasion, but I can state the impression which the conversation made on my mind. To the best of my recollection the conversation arose in this way:—James Patton, of Point Levy, who was at that time a clerk in the employment of Messrs. Gilmour & Co., was absent from his duties in the office, and Mr Gilmour was anxious that he should be found, the name of Miss Ferguson, the present plaintiff, having been then mentioned in connection with that of James Patton, Mr Gilmour said that it was an unfortunate affair. I said, "If he likes the girl he had better marry her." The defendant then answered that she was a loose character, and said that she had been kept by a person in Montreal, and that it would never do for

Patton to marry her. To the best of my recollection the word whore was used by him in reference to the plaintiff; the decided impression left on my mind by the conversation was that the plaintiff was a common whore. I understood this to be a private conversation, and did not repeat it until this action was made the subject of conversation in Mr. Hamilton's shop in the Lower Town, sometime after the suit was brought, when, having heard statements made respecting the plaintiff as coming from Mr. Gilmour, I confirmed them as being the same used by him to me on the occasion already referred to.

Witness being asked what the words used in Mr. Hamilton's shop were, the defendant's Counsel objected on the ground that no conversation at which Mr. Gilmour was not present could be made evidence against him.

The Judge allowed the evidence to be taken as going to show what the words were which were then confirmed in the recollection of the witness as being those used by the defendant to himself.

*Examination Continued.*—I on this occasion heard the words mentioned which Mr. Gilmour is charged by the plaintiff in this cause with having used, and I recognise them as being the same as those which he had used in the conversation with me to which I have sworn. I am sure that the younger Hamilton was present on this occasion, I do not know if the elder was or not. I never heard anything against the character of the plaintiff until this conversation with the defendant.

*Cross-Examined.*—I have been in the employ of the firm of Allan Gilmour & Co., of which the defendant is a member. I entered into their employ several years previous to the institution of this action. I was their confidential clerk and book-keeper. I think that Mr. James Patton, to whom I have referred, was in their employment also at the time of the conversation in question, he was either employed by them or by his father, who was connected in business with them. James Patton was the cause of the conversation, and it referred to him. The defendant and myself then referred to James Patton's conduct generally, and particularly to his absence from the office, he had at that time been absent for several days, but I cannot say exactly how long. It was said at the time that Patton was with the plaintiff, and the defendant and myself both supposed it to be so. The conversation took place in Mr. Gilmour's office, I think that we were alone, but some of the young gentlemen of the office may have been present. I don't remember repeating this conversation to any one. I had a con-