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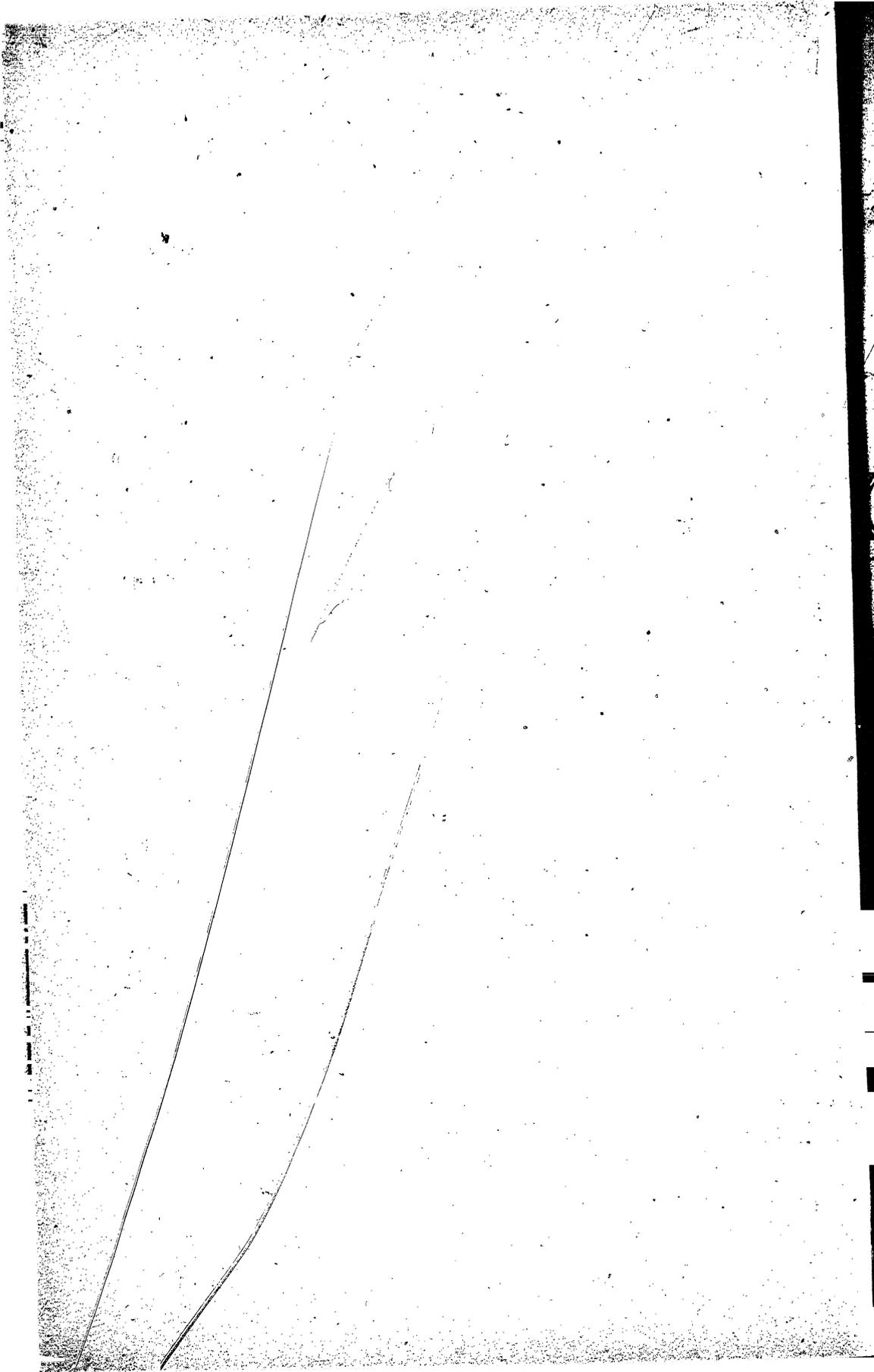
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A FULL AND ACCURATE REPORT  
OF THE  
**CELEBRATED SLANDER CASE**  
OF  
**FERGUSON vs. GILMOUR.**



**Law Intelligence.**

*Reported for the Morning Chronicle.*

**IN THE SUPERIOR COURT, QUEBEC.**

WEDNESDAY, 30th November, 1853.  
(Before the Hon. Mr. Justice CARON, and a  
Special Jury.)

No. 1554.

CAROLINE J. FERGUSON, Plaintiff,  
*vs*  
JOHN GILMOUR, Defendant.

**ACTION OF DAMAGES FOR SLANDER.**

This was an action brought to recover damages for certain slanderous words alleged to have been spoken by the defendant concerning the plaintiff. The damages were laid at £10,000.

Messrs. Holt & Irvine appeared as counsel for the plaintiff, and Mr. G. Okill Stuart for the defendant.

The list of Special Jurors (speaking the English language) having been called over, the following gentlemen answered to their names and, having been sworn, composed the Jury:—

GEORGE HALL,  
JOHN S. FRY,  
JOHN DORAN,  
Wm. O'BRIEN,  
S. T. SHAW,  
H. CODVILLE,

HENRY BENJAMIN,  
S. LEVY,  
HENRY KNIGHT,  
M. G. MOUNTAIN,  
G. G. ARDOVIN,  
WM. RAMSAY.

Mr. HOLT opened the case on the part of the Plaintiff.

He stated that the Plaintiff, Miss Ferguson was he believed a lady almost wholly unknown to the jury, inasmuch as she had been for several years absent from Quebec; the Defendant was well known throughout the Province as a member of one of the largest commercial houses in this city and as a man of great wealth and influence. The offence with which Mr. Gilmour now stood charged before them was one of the meanest social vices, and it was so difficult to believe that a man in his position should use language of the character of that imputed to him, that he (Mr. H.) did not conceive himself justified, at that stage of the proceedings, in stating to the Jury with any degree of positiveness the nature of his instructions or the guilt of Mr. G. He (Mr. H.) would merely observe to them that if it were true that the Defendant had in fact permitted himself to asperse the character of the Plaintiff, it would be his duty to point out to them in the strongest way, the serious effect which slander uttered by Mr. G. was likely to produce upon the name and reputation of the lady. With reference to the nature of the charge brought against Mr. G. he informed them that the Plaintiff alleged that about the 1st May, 1852, at Quebec, Mr. Gilmour, had said, in the presence of third parties, that "she was a "w—, and that she had been kept by a "gentleman in Montreal;" that in consequence of this statement by Mr. Gilmour, one Mr. James Patton to whom she was engaged, refused to marry her, and that she was otherwise greatly injured in her reputation. Being unwilling to detain

them unnecessarily, he begged to refer them to an authority of much weight in questions of this kind, for the purpose of shewing how insidious and dangerous were statements affecting the character and reputation of an individual. He alluded to the treatise of Mr. Dareau, an eminent French writer, and would endeavour to translate a few passages; "Defamation," "says an author "whom his talents and his misfortunes "have rendered illustrious," is to the moral "being what poisoning is to the physical. "It is a kind of attack against which it is "almost impossible to defend one's self. It "is a thousand times more easy to give "credit to a report which destroys the "honor of a citizen than to introduce in- "to his body a deadly drug; the penalty "should therefore be in proportion to the "difficulty of defence. We hardly know "any antidote against calumny, while we "are not without remedies against poison. "Besides, the fatal draught is generally "administered by a hand that remorse or "the fear of punishment may stay, but "with what boldness does not the defamer "bear himself, when the slander appears "to him but a social jest, or when he can "range upon his side the wits, the pretty "women, and the men who pass for very "pleasant fellows, whose refuge from "ennui is the dissection of those unfortu- "nates, who often commit no other wrong "than that of being absent! All that then "passes uncontradicted, remains incon- "testable. Soon, the most revolting fabri- "cation acquires, without further examina- "tion, the force of truth; one only remem- "bers that one has heard the thing as true, "and it is repeated to hearers possessed of a "credulity facile enough; soon arises the "universal cry which pronounces the con- "demnation of the unhappy person, who "was little, if at all known; and things "come to that pass that virtue feels herself "compelled to acknowledge the truth of "the report. The pretenders to virtue pro- "scribe the unfortunate individual, that "they may not be supposed to resemble "him, and those who practise it, consign "him to ignominy, to purge society of a "member whom they believe capable of "bringing dishonor upon it." Mr. Dar- "eau then exclaims: "What must it not "cost the unhappy man, under such cir- "cumstances, to render his innocence as "widely known as the defamation! One "day of calumny requires whole years to "efface it; its wounds, if they are not al- "together incurable, leave scars which "sometimes pass from one generation to "another." The truth of these words was "but too often confirmed by the every day "experience of all of them; they were all but

too ready to believe ill that was spoken of a neighbour; the scandal that enters by the ear might not wholly remain in the memory and may be even discredited, but some- thing of it always remained, to the prejudice of the party of whom it had been uttered. The situation of the plaintiff, at that mo- ment, was most painful and embarrassing. She had come before them with the utmost reluctance, but with the conviction that she was placing her fate upon the issue of this trial. She was aware of the peril which she ran in encountering a man of so much power as the defendant, but was driven to it by the consciousness that her reputation was wholly lost unless she un- hesitatingly afforded the man who had slandered her an opportunity of making good his charges before a Court of Justice. She had no fears for the result, she demanded the fullest enquiry, and would be satisfied with their verdict whatever it should be. Mr. H. stated that the position of the plain- tiff was most painful in this respect, that one of the grounds of the action against Mr. Gilmour was that by reason of the speaking of the slanderous words, she had lost her mar- riage with Mr. James Patton; now she was compelled to call Mr. James Patton and his father, Mr. Duncan Patton, as witnesses, she feared nothing that they could truly say against her, but there were two law-suits pending in which she was plaintiff and Mr. James Patton, defendant. Certainly strong feelings had been excited by these suits and there was a great deal of animosity towards the plaintiff exhibited by both father and son, but he trusted that upon this trial they would forget those differences, and not leaning either to Miss Ferguson on the one side or to Mr. Gilmour on the other, come forward like honorable men, say frankly what they knew to be the truth, and afford the plaintiff a fair opportunity of clearing her character from the aspersions which had been cast upon it. If they, the Jury, should be satisfied that Mr. Gilmour had really used concerning this lady the expressions attributed to him, that he had spoken them maliciously, that is, without any reasonable and legal excuse, they would feel them- selves called upon to condemn most em- phatically such conduct on the part of a man occupying such a position as Mr. Gilmour, and, by the extent of the amount awarded as damages, make it known that no wealth, or rank, or influence, could shield the slander- er, when brought before a Jury who would mete out justice with an even hand. Mr. George Railton was then called as a witness on behalf of the plaintiff. Mr. STUART.—The defendant now in Court, has been served with a rule to answer in- terrogatories. He is a gentleman having a

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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-

versation with Mr. Irvine, one of the plaintiff's Attorneys, a day or two ago, on the subject of this case, it was after I had been summoned as a witness for this trial—I had occasion to go to his office to see him on other business, and took that opportunity to ask him for what purpose I had been subpoenaed as a witness, he told me that it was to prove certain statements which Mr. Gilmour was charged with having made against the plaintiff. I then told him what I could prove, which was what I have already sworn to to-day. I don't remember having mentioned this conversation with Mr. Gilmour to any one else, unless it may have been to Mr. Duncan Patton with whom I have had frequent conversations on the subject of the plaintiff. I cannot say that I mentioned to Mr. Duncan Patton what Mr. Gilmour had said, nor can I say that I did not. It is certainly within a week that I spoke to Mr. Duncan Patton for the last time. I cannot swear positively as to whether I had any conversation with Mr. Duncan Patton about what passed between me and Mr. Gilmour on the occasion that I have referred to, I allude to the last interview that I have had with him about a week since.

Question.—Are there not differences between you and Mr. Gilmour since you left his employ arising from the manner in which you had kept his accounts as his book-keeper?

Answer.—Differences existed between Mr. Gilmour and myself, but a proposal of settlement was made a few days ago by Mr. David Gilmour.

Re-Examined.—I have never spoken to Mr. Gilmour's Attorney on this question. At the time the words were used I think Mr. James Patton resided at Point Levi. His father Duncan Patton lived there. His employment was at Indian Cove.

JAMES PATTON, clerk, sworn.—I know the parties in this cause. I am not related, allied, or of kin to any of them. I am in the service of Messrs. Gilmour & Co., and am not interested in the event of this suit. There is a law suit pending between the plaintiff and myself. The plaintiff went to reside at my father's house on the 1st of October, 1851. She was employed as governess. She is anything but an educated person. She left my father's house on 1st May, 1852. When she first came to reside at my father's house, I did not reside there. The plaintiff had been residing at my father's house for a fortnight or three weeks when I went to reside there. I became intimate with the plaintiff. I corresponded with her and became more intimate with her than common friendship. I wrote to her expressing my feelings, and on one occasion, in one

of my letters, I think I alluded to a union with her. I am not aware that I have done so more than once. About Christmas, 1851, I bought a ring and presented it to the plaintiff. I perfectly recollect the occasion that I presented it to her. The ring was purchased at Mr. Ardouin's, and three days afterwards she went and exchanged it for a brooch.

The following letters having been shewn to the witness he acknowledged them to be in his handwriting. Mr. Holt then proceeded to read them to the jury, and the reading caused great laughter in which Judge, jury, Counsel and audience joined:—

MISS FERGUSON,—

The purse would have been most acceptable had it not been accompanied with your uncourtous note, the contents of which I shall explain at some future period.

Yours, &c.,

PATTON.

Wednesday, 3rd Decr., 1851.

YOU'LL REMEMBER ME.

When other lips and other hearts  
Their tales of love shall tell,  
In language whose excess imparts  
The power they feel so well,  
There may perhaps in such a scene  
Some recollection be  
Of days that have as happy been,  
And you'll remember me.

When coldness or deceit shall slight  
The beauty now they prize,  
And deem it but a faded light  
Which beams within your eyes,  
When hollow hearts shall wear a mask  
'Twill break your own to see—  
In such a moment I but ask  
That you'll remember me,

J. P.

Indian Cove,  
17th February, 1852. }

MY DEAR, DEAR CAROLINE,—

Yes; it must have been you I saw yesterday about 2 or 2½ o'clock going towards Beaumont. I merely got a glimpse of you through the cluster of trees behind Mr. W——'s house as you were passing by. You have no idea Carry how I felt I actually trembled as if I had taken a dose of ague.—When I recovered from my surprise I ran down to the long wharf and watched you as far as my eyes could reach—and my heart filled when you were borne from my sight.

My dearest Caroline—yes you are mine—are you not? I know your answer will be in the affirmative degree. Oh! I am so glad you have come once more to reside on this side, I shall not go to town any more, except with your permission. Caroline I know you will feel lonesome down there but you must bear it all for my sake—I will see you often—I will meet you tomorrow afternoon, say 3 o'clock at the top of the hill near Mr. F——'s you will know it by the nice grove of maple trees on the left side—if

is a sugary. Keep your eyes open as my father and the family may go for a drive in that direction to-morrow.

My Caroline do not disappoint me I am so anxious to see you, I have a great deal to say to you which I shall postpone until we meet.

The bearer of this note will hand you a parcel, which please accept—though poor the offering be—one of our Captains brought out a few from England as a speculation and the one I send you was the only one he had remaining which I got for a cipher. I expect per return of bearer a letter from you, and please mention if you will meet me to-morrow—you must excuse this scroll—I am sure you will. Saturday is always a very busy day with me. Adieu adored one, until to-morrow at 3 o'clock.

Ever your

JAS.

From one who loves thee.  
26th June, 1852.

Enclosed you will find a kiss be careful you do not let it escape

[A Picture of the Chrystal Palace.]

MY DEAR DEAR CAROLINE,—

I may safely say that fortune has for once smiled upon me—our meeting at B—'s has not been found out at least I have heard nothing about it—I hope dearest you have giving it your due attention what we were talking about the evening—and send me a long letter stating what you intend doing—Miss H. and her aunt spent the day at our house yesterday and Caroline as I am to be judged I did not go near the house until they left in the evening and my sister drove them to the ferry. Miss H. remarked if you had been there I would have come up. Yes dearest if you had been there "would I not have gone up." My beloved Caroline none but you will I caress—none but you will I love—I am a faithful lover and I shall never deceive you no never. Caroline I had a dreadful fall yesterday and I am afraid it has hurted my back—They sent for a strengthening plaster and put it to my back—I hope that you have written in the letter for me a full and explicit account what you intend doing.

If you do not leave this week for St. Mary say in your note when and where we will meet, because Caroline I am only happy when near you, Caroline I would have written you a longer letter but I am sure you will forgive me when you know that the Boss has not been in town this week and he and I have been writing a long document for the Gilmours, and I think he is going to New York I mean my father, he is going to town to-day—he is now coming towards the office, adieu, adieu, dearest until we meet again.

Ever Your

JAS.

4th Augt., 1852.

If Mr. F— should have gone past you can drive down with your carter, do not attempt to walk down.

DEAR CAROLINE,—

"Why are you sad" cheer up, dearest it makes me so unhappy to see you looking so dull

Caroline doubt not my love—I am your's for ever—yes, nothing shall part us  
In haste. Ever yours,

JAS.

DEAR CAROLINE,—

Yes, dearer to me than life.—Caroline you requested me to write you a few consoling lines to sooth your aching heart. I will try and do so, although I am perfectly wretched. Caroline, you told me to-day that I no longer loved you—No Caroline, when I cease to love you this heart shall cease to beat I love you Caroline with that violent love of youthful passion—I love you as man never loved a woman.—You are my first and only love Caroline Yes Carry I never loved so help-me Heaven I never did till I saw you, and I never can love another—Beloved Caroline you are mine, and death shall only part us I am only happy Caroline when near you to gaze for hours on that lovely countenance to live in your sunshine. to clasp you to my bosom and call you mine—Caroline if my father and I have any words I shall leave Quebec wed you and toil night and day to make you happy

I remain,

Your unhappy

JAS.

DEAR CAROLINE

I am doomed to misery—Caroline you heard the cruel remark my Mother made at dinner; that if I should die that I would have but few to mourn or shed a tear—for me—Caroline, I could have thrown myself into your arms and wept bitter, bitter tears of heartfelt agony; and answered yes! here is one that would cry tears of anguish, and ah! even more—die with me—"would you not Caroline?" Caroline, I can never survive our parting—deem not this romantic—No, Caroline, even now you must perceive the great change in my whole appearance, I am no longer the gay and happy Jas. you once admired,—Caroline, look at my pallid cheeks, my dejected looks and you will see sorrow pictured there. Even my acquaintances ask why I look so wretched and down-cast. Oh! cruel, cruel fate—to part two fond hearts like ours. Caroline, you told me I should never prosper, I cannot; I am not long for this cruel world. The only boon I ask when leaving it, is, that I may expire in your arms, that my last words shall be, breathing your name.

My beloved Caroline you can rest assured I shall never wed another. You are my first and only love, and in weal or wo, I'll remember thee. Caroline, I shall never abandon or forsake you! if I do, may God forsake me! Caroline, my father speaks to me so coldly and with such contempt, and if he do not change for the better and treat me kinder than he has heretofore done, I will fly to you and make you mine! "Caroline, won't you always love me?" Caroline it will break my heart if you place your affections on another. Caroline I can't write any more just now, my eyes are dimmed with tears, my hand is trembling and refuses to hold the pen any longer

Your wretched

JAMES.

## CAROLINE

If you love me still do not go away on Saturday it will make things look worse than they really are; you will have only a few days to remain after Saturday till the 1st May. Endure it all for my sake Caroline, and you will never regret it. No Caroline, I shall be your's for ever! When you have left I can call and see you at Mr. D——'s, and we shall make things all right again. Caroline, you said I deceived you. No Caroline, I never did, so help me God, I love you too dearly to deceive or forsake you. My Father told me to leave his house, he also said he was only keeping me for charity sake. If I was to leave now Caroline, you know that he would not pay my debts or give me money to go away

Caroline, the moment he gives me money I shall go and share it with you even to the last farthing. I intended saying that when you came across on Sunday that you came into Miss P——'s bed-room, and that you mentioned that you had seen R——, and that he said he was coming across to see me and that Miss P. D—— I was sitting in her room and that I left in a rage and went down stairs and that you wrote the note asking me to come up again—I will clear the matter so as no stain shall be put on your character. Caroline, I appeal to you in remembrance of our once happy days to forgive me. Oh! Caroline, if you only knew how I feel, my heart is breaking, you would once more give me your hand and say I am still dear to you. Oh! Caroline say not after you leave here that we part to meet no more. I implore you Caroline, for the sake of our dear little child, that you wont never abandon or forget me.

I can't write any more Caroline, my heart is to full.

## MY DEAREST CAROLINE

I little expected when I hurried from the Cove on Saturday evening, and I might add almost flew, that I might see thee sooner, to meet with the cool reception you gave. Instead of asking how I was and appearing glad to see me, you appeared quite cool and collected, and, as I thought, hesitated to open the door for me—It was not always thus Caroline—I remember the time when you would have received me with a smile; ah, such a sweet smile, and in my estimation, I considered I was sufficiently compensated for my visits. But, alas! Caroline, these days of bliss have vanished—yes, Caroline, you seem to have forgotten them. 'Tis useless for me to tell you how I love you, you know it too well. Caroline, if you have ceased to love me, for God's sake tell me so. If you still love why did you drive me from you on Saturday evening—do you think that I am entirely devoid of feeling, that I can be thus treated by you and not feel it, and sensibly too? Caroline, I often sit for hours thinking of you, until my heart has nearly broken—By Heavens! I love you as tenderly, as passionately, as fondly as ever, and unless I am loved in return as well as ever, I shall not see you again until you come to reside at Mrs. F—— Caroline, I can never bear to have your love for me diminish for a single moment. Pause, Caroline, pause ere you drive me to madness. You accused me of not coming to

see you—Cary, if I was master of my own time, readily would I spend my whole life time with thee—"Am I not your's,"; yes; Caroline, till death parts us; even then, if ever it should be my lot to survive you, this heart shall never know another love, oh! no never, you are too dear to me, your image too well imprinted on my heart ever to be erased or replaced by another's. God forbid, Caroline, that I should ever live to see the day we must part for ever.

Caroline, if you only knew the anguish you have caused me this week, your too sensitive heart would really feel, and dearly love me—no; Caroline, fancy you see me with drooping head and perfectly disconsolate, and salt tears trickling down my faded cheeks, and all for you. Ah! Carry, deem it not unmanly for me to weep, it helps to sooth my throbbing, my all but broken and bereaved heart.

"Caroline, why do we always quarrel when we meet?"—the fault lies all with me—When sitting alone, thinking on thee, the demon of jealousy enters my mind, and I picture myself here am I alone, wretched and unhappy, and no kind friend near to pour into my ear one kind word of solace, and that you are probably walking with another, and I the furthest object in your thoughts. If I accuse thee wrongfully, oh! pardon me, dearest Caroline, for treasuring for a moment such evil thoughts. I can't help it, I am so jealous minded. Caroline, I have a great deal to say to you, but must defer it till we meet—that is if you wish to see me. Say Sunday, at the bottom of Gallows Hill, at 2½ or 3 o'clock, I can't meet you, according to promise, on Thursday, as I am very busy. Oh! Caroline, I am so anxious for Sunday to come, so as I can see you and press you to my fond bosom and call you mine Say you are mine for ever—and I will be again your happy

JAS.

From one who loves thee.

Don't disappoint me on Sunday—I will not keep thee waiting. I hope you have a long letter for me full of love.

## DEAR, DEAR CAROLINE,

You asked me to-day if I loved you still: yes, Carry, I love you as passionately as devotedly as ever, and rest assured this heart shall never know another love but yours.

Caroline, you are about to visit the scenes that recall to mind the many happy hours we have spent together, and it makes me wretched to think they can never be again.

Caroline, your portrait is now before me, and ah! how I gaze upon it, how I kiss it. Yes, I have dropped a tear upon it. I shall wear it next my heart, never to be removed, never to be replaced by another's.

Caroline; never doubt my love—I shall ever love thee. The happiest moments of my life I have spent them with you. Caroline, I am wretched. When you go home this evening retire to your bed-room and think of me, it will help to console me to think that we are thinking of one another at the same time.

I will call and see you at Mr. D——'s, on Sunday, say 3 o'clock.

Your's in haste, JAS.

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1 o'clock.

Caroline, you see that my father sent me away—adieu, Caroline, till Sunday. I am very anxious to know if you have engaged with Mrs. F—. I will write you to-morrow, and write me a full and explicit account per bearer.

JAS.

DEAREST CAROLINE—

Enclosed you will find what I promised you, which please accept. The Boss has arrived, and him and my mother are both sitting on the gallery, and it is impossible for you to pass without them seeing you, you can remain at Mr. B's—, and I will try and send a calash to take you to the passage at six o'clock, come over early my Carry to-morrow, as I will be able to meet you at about 2 o'clock,—Adieu dearest until to-morrow, you have no idea how anxious I am for it to arrive so as I can clasp thee to my fond bosom and call you mine.

Your favorite letter carter has just arrived with a captain at the office, so I will send him to you and make what arrangements you wish about going to the ferry, on no account dearest let them see you passing our house, if they saw you our plans will be all frustrated.

Your affectionate,

JAS.

After we parted yesterday evening, most fortunately I procured a calash at B—'s, and arrived at home at a reasonable hour, I asked my sister Mary who she had seen in town, if you recollect I told you her and my mother had been in town, she told me that she saw you and a little girl going up Mountain Hill, and that she thought you were looking very bad, and also she had been informed that you were stopping at a low Hotel, at the ferry, you told me Caroline that no person from this side saw you yesterday, however, it matters not, more than likely my father will make enquiries about you at the ferry to-day. My dear, dear Carry, I ought to be one of the happiest beings in existence, surrounded nearly with every comfort, and, yet still more to be loved, so passionately, so devotedly and tenderly by you and instead of which I am one of the most afflicted mortals living. Oh; Good Heavens what a night of trouble has passed over me and oh, dearest all for thee. Caroline my eyes are all swollen with crying last night and they remarked at breakfast that I had grown fat since last night. My Caroline you told me that I received you coolly yesterday evening, Heaven be my witness if I did not all day yesterday think of you, and how I pictured to myself how fondly I would greet you, how I would receive you in my open arms and clasp you to my fond bosom and welcome you back again into the arms of him that would readily die for you, Caroline forgive me for having treated you as I did last night I am to blame, but never for a single moment doubt my love, anything but that dearest. Love you,—Oh, to distraction. I have giving you every proof of my love, instead of being the gay and lively youth of other days, I am like a person who has renounced all the pleasures of this wicked world. I shun all company and live in solitude thinking on thee my love. Would that I wear,—No, I was going to wish that I were dead; but, No; live, live for

thee. My very soul is torn with grief when I think how you are situated just now, and obliged to remove from place to place, and you that have been nurtured with such care and kindness it is no wonder that I would wish to die. I thought and thought all last night on what you and I were talking about and am sorry to say without any other alternative than the one already suggested by yourself, that is either to spend a few days at Mr D—'s or go out to M—'s. I think you had better go out to M—'s for a few days, and try yourself to provide a nice place somewhere but not out of Quebec, oh no Carry, if you still love me, do not leave me. Heaven only knows you have given me every proof of dear I am to you, and still my dearest Caroline I cannot fancy you going out to that dirty hole of M—'s, try & find some place and I will meet you wherever you may say, on Sunday afternoon or if you could over on Sunday about 12 o'clock, and wait at our usual place of meeting, we will be able to talk things over, and in the meantime I will have a look out for a place on this side. I will get some money on Saturday, on the Sunday I will be able to give it you; dont remain any longer at the Hotel at the ferry as they know you are there, Adieu dearest, until we meet again, you are my darling and I ever shall be your affectionate and devoted.

Jas.

Mention in your note if J— will meet you some day this week in town, so as I will be able to hear what you are doing and where you are stopping and I will write to you.

MONDAY MORNING, 8 o'clock.

MY DEAR, DEAR CARRY,—

"How are you," and from my very soul do I hope you are quite convalescent, and I was going to add enjoying yourself. But no, my dearest Caroline, I know you can't enjoy any pleasure without me, at least I flatter myself that is the case. I would have written you by last Friday's mails, but I could not find a moment to spare, as my father requires sundry writings previous to his leaving for New York, which I had to get ready, and he started on Saturday evening, and he expects to be back by next Saturday. Dear Caroline, how often have I wished you had remained, we could have met every evening, and spent many happy hours locked in one another's fond embrace, however it may be better as it is. You can imagine how buisy I must be, I am obliged to be up at 4 o'clock every morning and do the Cove business, and after breakfast go to town and transact my father's; when I return home I am obliged to work until 10 & 11 o'clock at night, the reason of our being so busy is that the term of years of copartnership has expired between my father and the G—, and they wish everything to be wound up.

My dear Caroline, your last note I could not understand you mention something about a M— and a C—, and about my father crossing in the steamboat. He told me he saw you, he and Mr. Gilmour were standing talking together on top of Fraser's hill, where they both saw you, and my father merely remarked that he supposed you came over to see me, and after tea I went up to our old spot, thinking to find you there, if you recollect I mentioned in the scribble

I sent you that if you did not go away that afternoon to meet at our usual place, and what you had written in your last scroll led me to believe you had made the miller wait expressly so as to meet me. Caroline, imagine you see me alone, anxiously waiting your arrival until dark, and when I found it was too late, I went down to the ferry and I was informed you had started, and I came home and I cried nearly all the road. And why should I not weep bitter tears? Am I not separated from the only object I love—the only object I wish to live for and no matter for how short a time. I find each day as if it was a week. Caroline, often do I put down my pen and think how you are employing yourself, if you are out making hay with the rest of the family, or if you are alone thinking on me. You mention about sending a letter addressed for me to a Mr. Wm. P——. I have not the pleasure of knowing this person, however, Caroline, I think you might safely write me through the Post Office, address it in care of Point Levi Post Office, don't put any signature, and if possible address it in a manly style, for fear it might be left at Gilmour's office with our other letters, but I leave it all to your discretion; but dearest you do not know how anxious I am to hear from you. Miss H. has gone to town, and dear, dear Caroline, the whole time she was at our house I did not spend a single evening with her or in her company, and she remarked that the Misses R—— and her aunt, and others found me so gentlemanly, but she begged to differ with them, because no Gent would have left his sister's guest and spent his time otherwise, in fact she was quite vexed about it. Caroline, I hold you too dear at heart to flirt and talk nonsense to other women, I am one of the most faithful lovers in existence. I will never deceive you, no, by Heavens! never, you are mine, and in return I am your's till death. I have no news to communicate, I did not go to town on Sunday. I stopped at home all day. My father left strong orders with my mother to see that you and I did not meet, and so as to inform her we could not meet, I was obliged to say you were out at St. Mary's. Mr. G. and C—— are coming down the hill—Mr. Gilmour is here every day.—Adieu, my darling Caroline, farewell until we meet. I have kissed your portrait a thousand times since you left, I also enclose you a dozen kisses. Upon my soul, Caroline, I have kissed your name in 1 doz. places in this letter. Adieu adieu.

ever your  
Devoted lover,

JAS.

Excuse this scroll. Write me Caroline at all risk, but no name to it.

SUNDAY, 3 o'clock, P. M.

CAROLINE,—

I received your scroll, I cannot find it in my heart to upbraid you: no I love you too dearly though you have wounded me to the very heart. Caroline I forgive you from my very soul, and may you never endure the anguish I now feel while writing these lines. I am obliged to put down my quill so as to enable me to breathe freely. I am choking, Caroline on receipt of

this letter retire to your boudoir and picture to yourself—I sitting all alone and wretched, no confiding friend near to condole with me. No home—oh! that I had one true friend wherein I might pour out my grievances. I am enduring pangs of grief that none can feel but those that has been slighted by the object of their affections. Caroline my brother handed me your note in church and I was so eager to know its contents that I opened it in church thinking it contained many words of endearment but alas, I was disappointed, I saw it had been written in a hurry. Yes Caroline during a long week you could not find time to write me. You were otherwise better engaged than to think of me. When I finished perusing your note my heart filled and I was obliged to rise and leave the church before the whole congregation.

You say you did not contemplate me sending to-day, I sent living in hopes I would receive a long letter from you, full of love, it would have helped Caroline to soothe my already cancered heart. No matter Caroline, I had to give my brother Duncan 10s to be the bearer of my letter, and what did I receive from you as a recompense a mere scribble. Caroline, you say you are ill, I sincerely, hope not dangerously, Caroline if you really love me as you profess to do it would have soothed your aching heart to have sat down and thought of me and have penned me a long letter, you were perfectly aware that I was to have written to you and you could have sent your letter in return by the bearer of mine.

Caroline forget me—banish me from thy memory—cease to think that I exist, until the hour you require one true friend. Caroline we meet no longer as lovers. But I shall ever be as a brother to thee. Yes Caroline I will toil night and day to make thee happy even now I am up betimes in the morning until late at night working for you—and Caroline how have you repaid me—have I not always been kind to you, have I not always coincided with you in all matters—Caroline my heart is breaking— I can't see—my whole frame is shaking as if with ague.

Caroline imagine not for a moment that my family have been poisoning my mind towards thee no, rest assured your name has not once been mentioned in my presence since you left. No, your not writing me is a sufficient proof that I am forgotten, alas that I ever lived to see the day that I should be forsaken by her I love—Caroline you have inflicted a wound upon a poor heart never to be effaced by time, No never.

Caroline new scenes, new objects will teach thee to forget, they will dissipate painful remembrance. Yes, Caroline, when your head is pillowed on another's bosom oh think of me, recall to mind the many happy hours we spent together—yes Caroline think of the evening when first you imprinted a kiss upon my pallid brow and I in return clasped you with all the ardour of a first love to my throbbing bosom and called you Caroline. Those days of happiness have vanished never again to return and there is nothing now left me but a dark and gloomy path.

Caroline as sure as the unrivalled sun now shines above me this heart shall never know another love oh, no, never; you were my first and only love. Caroline I am disconsolate and melancholy so much so that it has awakened the

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sympathy of my father and he has kindly offered to allow me to go to England in one of the ships now loading as he thinks a trip across the Atlantic would benefit my health. I declined going No Caroline I can never cross the sea from thee. I would then be too far, far away from her I love. Caroline, I love you as fondly as passionately as ever. although we are estranged, my prayers shall ever be for thy welfare and happiness. Oh! God, why am I so grievously afflicted. Caroline, this is the last letter you shall ever receive from me under the same circumstances. Adieu, adored one, adieu—farewell, Caroline, farewell, once more fare-thee-well, I am obliged to come to an abrupt conclusion, my hand refuses to hold my pen any longer, and I am bound down with grief. Caroline, I am going to town on Tuesday, if you still wish to see me meet me where we first met, and where we meet for the last time—at the bottom of the hill, outside St. John's Gate,—as a signal that I am the bearer of this, I will send it up to you by a carter; say 1 o'clock, the hour for meeting. If you can't find it convenient to meet to-day, say next Sunday, at 3 o'clock, and at the above appointed place.

Caroline, my Father gave me £89 on Saturday—meet me and you shall share it with me, you shall never have it to say that I was mercenary.

Your's till death,

JAS.

DEAR CAROLINE,—

Forgive my rude conduct towards you this afternoon, I am sure you will Caroline when you reflect for a moment that I am sick and peevish. You went to town yesterday without writing me a few lines, saying when you would return, and it made me so wretched all day yesterday and all last night. Dear Caroline, you cannot believe how sorry I am for having spoken to you so crossly, and particularly so when I think you crossed the river such a cold bitter day, and I flatter myself it was to be near your James. With your permission, I will go up to-night.

DEAREST CAROLINE,—

If you could only look at me all alone in the office crying like a child, I am sure you would still run and clasp me to your bosom and call me your Dear James, Caroline my heart is breaking, Do make up friends with me, you know it was not intentionally that I caused the exposure of your note.

Caroline I shall never abandon you, No, this heart shall cease to beat first. unless you wish to leave me and be another's. I will give you sufficient proof of my love before you leave Quebec. You asked for something in your note. What was it? I could not make out what it was. Write me Caroline saying if I am still as dear to you, and if you are willing to make up with me Caroline, do not let us part in anger, Oh, God no, you must give me your portrait Caroline as you promised, and you shall have mine if you still wish for it.

DEAR CAROLINE,—

Yes, you are still dear, although absent from me your image is imprinted on my memory

never to be effaced. No, never, Caroline I am now writing to you at 12 o'clock at night when every member of the family are in their beds, and everything around dark and gloomy; and in the room that was once your's—the room that recalls to mind the many happy hours I spent with thee—never again to be realized under the same circumstances. Caroline my only pleasure, my only recreation is to retire to some secluded spot and think of thee, its the only solace I ask, to live in solitude thinking on my dearest Caroline Caroline yesterday for the first time since you left I opened my toilet box and the first article that caught my eye was the slippers you worked me, and ah! Caroline I sat down lost in admiration, lost in thought, yes dear Carry I thought I saw you sitting near the window with your on a chair in front of you as you so often sat and busily plying your needle and I sitting on the sofa near you with your hand fondly clasped in mine, Alas it was but a dream, when I awoke from my reverry no, Caroline was there. No, may be at that very moment you were flirting with Mr. H— or B—. Yes Caroline, I was informed that Mr. H. was gallanting you about town, and little did the parties imagine who informed me the wound they were inflicting on my already wretched heart. Caroline I retired to my bedroom and wept—yes, wept, and unfortunately my father came into my room and saw the traces of tears on my cheeks, he sat down on the sofa and asked me what was the matter. I told him I was wretched that I was the most miserable being on earth, he then asked why, and I gave him an evasive answer. He has been very kind to me lately because he knows I am wretched and doing all the business just now, Mr. W. being severely hurt. Caroline I will not be able to meet you on Sunday as I promised. My father was displeased at me going to town last Sunday afternoon and I do not wish to cause his displeasure until I get the money from him; he has promised to give it to me on Monday so I will be able to see you on Monday or Tuesday the latest. Dear dear Caroline excuse the abrupt manner in which I conclude this letter. I have a great deal to say to you but I hear a footstep and the clock has just struck 2 o'clock. Good night my dear Caroline.

This letter is not written in the style I wished; I intended dwelling on a subject that is heart-rending to both of us—that is our parting. Yes Caroline in a few short days we part may be to meet no more. I expect a long letter from you.

Your's for ever,

JAS.

My kind respects to Mrs. and Mr. D—  
Caroline oh! how unhappy I feel.

(Picture of Chrystal Palace, Hyde Park, London.)

DEAR CAROLINE,—Write me per bearer how you got across last evening, and if the boatmen treated you with due respect, and if your boarding mistress said anything about your going home so late. Caroline, you are my guardian angel, only for you I should have gone across last night, and it is well for me I did not, because my father sat up expressly to see the hour I would come home; however, he said nothing because it was only  $\frac{1}{2}$  past 10 o'clock when I arrived. I

hope he will not hear of your being in Point Levy yesterday. I am quite anxious until he returns from town. Caroline, I am very weak and feeble. I hope dearest you were not alarmed crossing last night. When I went up into my bed room I opened the window and sat gazing towards town and at dear Carry; I need not tell you upon whom my thoughts wander. Yes, I will tell you—as you are of a jealous nature you might think my thoughts were upon some other. No, dear Cary, you were the object of my thoughts, and I sat thinking of thee till near 12 o'clock, when shutting my window I waved my hand in the direction I thought you lived in, and bid thee good night. Dear Caroline, I can never doubt your love for me for a single moment—no, dearest you have given me too much proof how dear I am to you—you told me in your last note that with my arm around you, you would face a sea of troubles, and oh! beloved one! this arm shall never encircle another. No, Caroline, I am yours for ever, I am thine and thine only. I can't bear to gaze at other women since I have known you. Yesterday, when crossing, although the steamboat was full of ladies, I retired to the most secluded spot and thought.

MY DEAR, DEAR CAROLINE,—

We were seen on Sunday together on Mountain-Hill, and some person told my father, and he said to me last night, well; you still persist in walking with Miss Ferguson, after all I have said to you. Now bear in mind what I am going to say:—I swear by the Eternal God, that if I hear of you walking or keeping company with her any longer, you will have to leave my house for ever, and seek for employment elsewhere, and also, I shall disown you as my son. Caroline, I care not—he may threaten as he likes, but meet you I shall and will, if I was even sure of death afterwards.

Caroline, you have not the remotest idea of all he told me about you; and he could bring proof to substantiate what he had said to be too true. If it is the case Caroline, you have been deceiving me grossly. Caroline, I will not say anything about the matter until we meet—say next Sunday, at the grove—fail not to be there, I will run all risk to meet thee—or if you come up on Saturday to Mrs. B——'s, I will see you there, do not come with the intention of going to town—if you come on Saturday, let it be about 12 or 1 o'clock, or if you think we could meet better in town please inform me where and at what hour. Caroline, it would be far better for me if I were dead. Oh! God what a night of deep anguish has past over. I cried till I thought my poor heart would break! Oh! Heavens, how I love you—and still my adored Carry you have played me false.

Cheer up my beloved one. When I reflect for a moment and think you are down at Beaumont, all alone and wretched no person near to cheer thee, no kind one to speak to you, it grieves me to the very soul. We must bear it all Carry; tears are now gliding softly down my cheeks. Oh! just God, how wretched I feel. I love you as man never loved a woman. To lose thee will be my death. For Heaven's sake try and console me. Mrs. S—— has just asked me what is the matter with me that I am crying, for if you

should come up Caroline, be careful, people are beginning to talk about you and I meeting at B——'s, and it may come to my family's ears. Write my Carry, and tell me I am still your's that nothing but death will part us. Farewell, Caroline, till we meet again. My father and the Messrs. Gilmour are coming down the Hill, and I am obliged to stop writing—if possible write a few lines per the bearer of this letter. (Turn over.) Caroline, if you think We could meet better in town, go and live at D——'s; but beloved I have been thinking by your going to live there they may understand the blank—and that it would be better to remain at Beaumont under any circumstances.

If you could manage to go to church on Sunday, at Point Levi, and after church I will meet you and you can drive home in a caleche, we will talk about it on Saturday.

DEAR DEAR CARRY,—

Agreeably to promise I write you; but in very low spirits—I arrived here this afternoon at 3 o'clock, after a tedious journey of four days, the winds were very bad, and I feel quite exhausted; but not too much so to prevent me writing you immediately. I intend remaining here to-morrow (Sunday), and early on Monday morning I proceed to the woods, accompanied by Mr. W—— and Mr. H——, we shall be obliged to sleep for several nights in the snow before we arrive at our destination, where Mr. Welsh and I shall rest ourselves for a few days and then start for an exploring expedition un'il spring, we shall have two Indian guides with us. I hope I will be able to bear the fatigue. I shall have a great deal to contend against, however, I must bear it all for your sake,—yes, Caroline, for you, and only you,—do I wish to live.

Berthier is a most miserable place, I have been introduced to a few gents, and in course of conversation with one of them he happened to mention that he had been spending a night with a sick friend, a Mr. B—— an advocate and who is on the point of death, and not expected to live,—I asked him if he had a brother who died a few months ago, and he informed me he had a brother who died from dissipation and who was married to a Miss C——, of Montreal, he also said it was from dissipation that this B—— is dying, he is married to a Miss McB——, I have had the pleasure of seeing the other Misses McB—— and was invited to spend Sunday afternoon with them; but declined their kind invitation, a Mr. D—— a Lawyer, introduced me, I intend taking a walk with Mr. H——, to give him his first lesson on snow shoes in preference.

Caroline you must not fret, so cheer up dear, and take care of —— for my sake, you had better not write until you hear from me again, by your writing on receipt of this letter I will be far, far away in the wild woods, and may never get your letter. Yes, Carry, rest assured, every opportunity I shall have I will write you.

Caroline I must close this as Mr. W. is looking over my shoulder, and he has strict instructions to watch all my movements. My next shall be much longer and livelier. I doubt if you will be able to read this. Ever yours,

Berthier, 8th Jan'y., 1853.

*Examination Continued.*—I am not aware of having made any allusions to Mr. Gilmour in my letters, and it I did make any they were false. (The plaintiff's exhibit C. having been shown to witness, dated 25th April, 1853, he stated that the Mr. G. therein referred to meant Mr. John Gilmour, the defendant). He offered me a fine salary and I accepted it. It is also true that the salary was offered on the conditions mentioned in the letter. These conditions were that it was publicly known that I kept the plaintiff as my mistress or paramour, and no mercantile house would employ a young man of that kind. That was the first occasion, namely, about the spring of last year, that he ever mentioned, to my knowledge, the plaintiff's name. Mr. Gilmour said that I ought not to carry on as I had done, that Miss Ferguson had been boarding a long time at Mrs. Payne's and was often seen in the company of a Mr. Gisborne, and he also said not to marry the girl unless I had a strong affection for her, and if I had, then to marry her. That was all he said and he walked off. I do not recollect of his having talked of Montreal at all. (Witness acknowledged the letter F. as being in his hand-writing, but did not recollect the date.) The Mr. G. mentioned is Mr. Gilmour. This is not one of the false statements I mentioned. Mr. Gilmour would give me no money because he knew I still retained the girl as my mistress.

[Another letter is produced against the reading of which the witness vehemently protested, and appealed to the Court for protection.]

*Witness*—The letter marked A. and dated 3rd Dec., 1851, is in my handwriting. I cannot say that there was anything improper at that time between the plaintiff and myself, but there was shortly afterwards. I would, probably, have married the girl had she not borne the notorious character she does. I cannot state when I first heard reports injurious to her character; but it was publicly reported that she was a girl of loose character.—When I first met the plaintiff at my father's house she was a perfect stranger to me. I do not think that any person remonstrating with me urged me not to marry her. Mr. Gilmour told me to marry her if I had a strong affection for her. And no young man would marry a woman who would allow a young man to have illicit intercourse with her after a fortnight's acquaintance. All the letters which have been read were written after I had connection with her. The blank in the letter F. refers to a male child said to be mine, and I had no doubt that the child was mine, because she herself led me to believe so. It is a question whether the child was mine or not, from the very fact of

the plaintiff going under the name of Mrs. Smith now, while her name is Ferguson.

*By the Counsel for Plaintiff.*—Have you made any reference to this affair in presence of Mr. Melrose and Mr. McGie?

Mr. PATTON.—I have.

*By the Counsel for Plaintiff.*—Did you express any wish, in the presence of Mr. Melrose and Mr. McGie, to God that you could find some thing against the Plaintiff?

Mr. PATTON.—I might have expressed a wish to Mr. Melrose to get proof against Miss Ferguson. I did not know at the time that Plaintiff was residing at Mr. Melrose's Hotel under the assumed name of Mrs. Smith, and Mr. Melrose put this question to me, as I have since ascertained, with the view of pumping me. He advised me to go to Australia, and on his evidence I was capiased at the instance of the Plaintiff. I never heard of any report against the plaintiff's character from Mr. Gilmour. I was never present at any conversation between my father and Mr. Railton on that subject. The defendant is supposed to be rich, the firm is supposed to be very rich. I do not know whether there is any connection in marriage between the plaintiff and defendant. I had never seen the plaintiff but once in John Street, before she went to reside at my father's house. I had no acquaintance with her connections.

*Cross-Examined.*—I am the son of Mr. Duncan Patton. Mr. Duncan Patton, my father, was formerly a partner with the defendant. This partnership existed between my father and the defendant in October, 1851, when I first became acquainted with the plaintiff. My father then resided at Indian Cove, Point Levi, and the defendant, Mr. Gilmour, resided at Marchmont, where he still resides. There were two businesses carried on. One under the firm of Allan Gilmour & Co., and the other under the firm of Duncan Patton & Co., in which the defendant was partner. My father was only partner in the firm of Duncan Patton & Co., in October, 1851. I was in the employ of Duncan Patton & Co., of which Mr. Gilmour was a partner, as I have already stated. My duty was to attend to the inside and outside business. My father had charge of the business, and in his absence I took charge of it. When first I knew the plaintiff, in October, 1851, I was twenty-one years and a half old, and she was then about 23 or 24, I suppose, although I cannot tell. Before residing with my father, I resided at Mr. Walsh's, foreman Culler to Duncan Patton & Co. It was about five minutes walk from the place where I resided to my father's house. Previously to my acquaintance with Miss Ferguson, I received a letter from her requesting me to go home

and stay with my family, and a short time afterwards I received a purse which I returned. Before I knew her, I received one letter from her, inviting me home to my father's house. I went home a short time after receiving this letter. She gave me a purse a few days afterwards. About three weeks or a month afterwards I had an improper connection with her, and this connection lasted, in my father's house, until she left, in May, 1852. The intimacy was a secret one and perfectly unknown to my parents. (The witness having been asked on whose side approaches were first made, said that the fact of Miss Ferguson having first sent him a letter, was proof sufficient that the approaches were on her side.) There were approaches on both sides. The letters were hurriedly written, as the plaintiff was continually hovering about the yard in which I was working. When the plaintiff left my father's house, she went to reside with Mr. Faucher, where she remained, I suppose, two or three months. While she was there, I had repeatedly improper intimacy with her. Mr. Faucher, is, I believe, a lawyer. She was governess at Mr. Faucher's, and had, I presume, the care of his children. After that I think she resided with a woman named Mrs. Faucher, on the Little River Road, where she was confined some time in the fall, October or November. My improper intercourse at Lemieux's and at Mrs. Faucher's, on the Little River Road, continued after she was confined up to the month of July, I think of this summer. After leaving Mrs. Faucher the plaintiff went to reside with a person named Mrs. Robitaille. I left her at Robitaille's when I left Quebec about the tenth of January last. I suppose, it was after the holidays, that is of 1853, when I returned to Quebec. She was then residing with a farmer called Rodgers. My improper intercourse continued with her there. She remained there the whole winter I suppose. After she left Rodgers, she continued knocking about several houses staying about a week in each at a time. After that she came to Pointe Levy where I was residing at Lemieux's where I kept up a continual intercourse with her. She then began to prosecute me, which I think was about the month of July last. The next I heard of her was that she was residing in a Canadian hotel called the American hotel, under the name of Mrs. Smith. This hotel is kept by a man called Guay. The defendant in this cause never used to me the language following: she (meaning the said plaintiff) is a whore: she (meaning the said plaintiff) is a common whore, I can prove it: she (meaning the plaintiff has been kept by a gentleman in Montreal.

*By the Counsel for Defendant.*—Was the conversation which you had with Mr. Gilmour and which you referred to in your examination in chief, used as you believe for your benefit, in your interest, and in the interest of his establishment? (Objected to by plaintiff and objection maintained.)

*By the Counsel for Defendant.*—Did you refuse to marry the plaintiff in this cause in consequence of any language that fell from the defendant in this cause, if no, state your reasons fully and at length?

Mr. PATTON.—It was not in consequence of anything that fell from Mr. Gilmour, the Defendant, that I refused to marry the Plaintiff; it was because she volunteered to become my Mistress that I refused to marry her. I made inquiries as to what the general character of the Plaintiff was before my acquaintance with her, and I ascertained that she had borne a very light character. She wrote many letters to me. Those letters are all burned and consumed by me. I may be able to produce two or three, but none in comparison to the number she sent me. It was at her request that I burnt her letters, and she led me for a long time to believe that she had burnt mine. I have stated in my examination in chief that portions of the statements contained in those letters are true and that a portion is false. That portion which is true is that which relates to my affection for the plaintiff, I being under a state of infatuation at that time. I could not tell which portion of those letters are correct unless I heard them read or read them myself. The portion of one of the letters in which words are attributed to my father invoking the name of the Almighty and using threats and swearing that he heard of my walking and keeping company with the plaintiff are correct and true, and he did use such language to me before I wrote that letter. It is impossible for me to say at what period the letter was written unless there was a date to it and there is none.

*Re-Examined.*—I will be twenty-four on the sixth of June next. The plaintiff did not go to these places with my consent and it was with much difficulty that I found her out at Mrs. Faucher's on the Little River Road. It was at my suggestion that she left it, having heard that it was a house of bad reputation. The letters produced cover nearly the whole period of my acquaintance with the plaintiff. The matters of fact alluded to in the letters, I still adhere to.

The Court then adjourned.

## SECOND DAY.

THURSDAY, 1st December, 1853.

The Jury having come into Court the trial is resumed:

WILLIAM HAMILTON, Merchant, is called and being sworn says:—I am the brother-in-law of the defendant.

Mr. STUART.—This witness is not a competent witness, and his evidence may be objected to by the defendant; but I am instructed by Mr. Gilmour to state, that he does not offer any objection to his examination.

Mr. HOLT remarked that he did not admit that the witness was incompetent, and was prepared to show that there were good and valid reasons for admitting his testimony although he was a relative in the prohibited degree.

CARON J.—As the defendant does not object, let the examination of the witness proceed for the present; it may be taken *de bene esse*.

Mr. HAMILTON.—I do not know that the plaintiff and defendant are connected by marriage. I do not recollect in particular that the defendant made mention of the plaintiff's name. I have no recollection, and I don't believe it possible that I mentioned anything about Miss Ferguson in Mr. Brookes' shop in St. Peter street. I cannot say whether Mr. Gilmour ever mentioned Miss Ferguson's name to me; whether he mentioned it a hundred times, or whether he mentioned it once. I paid no particular attention to any particular conversation with Mr. Gilmour at any particular time with reference to the plaintiff or any body else. I do not mean to state positively that I have had no conversation with Mr. Gilmour with respect to Miss Ferguson; but I have no recollection of any particular conversation. I could not say whether or not I have heard the defendant mention the plaintiff's name. I have not to my recollection heard Mr. Gilmour make allusion to any lady with whom Mr. James Patton was connected. I have seen the plaintiff in the office of the plaintiff's attorney in this cause. It was with my own particular wish and request that I went there, for I had heard of some letter that was in that office. I heard it from Mr. Gilmour; of course, Mr. Gilmour spoke to me about it. I saw a letter there, or pieces of a letter without any date, and I think without any signature and no address; I am not positive as to there being no signature. I think it very probable that I afterwards spoke to Mr. Gilmour on the subject. I may have seen Mr. Holt, one of the plaintiff's attorneys afterwards at Mr. Brookes' establishment in St. Peter street. I do not recollect having seen him there more than once or twice. I don't recollect having spoken to him. My memory is rather defective. I can't say whether I forget more frequently events of recent date, or those long since

passed. I can't tell whether I forget soon or not a significant word used to me. I had a slight conversation, or a short conversation with the defendant this morning; I might and might not be able to say whether certain words had or had not been mentioned to me before.

Question.—Do you recollect having stated to Mr. Holt, one of the plaintiff's attorney, in Mr. Brookes' Restaurant in the Lower Town, that Mr. John Gilmour, the defendant had said to you that Miss Ferguson was nothing better than a common whore, and that she had been kept by a gentleman in Montreal?

Answer.—I have no recollection of it whatever, and don't think it possible that Mr. Gilmour ever used the words, at least I don't believe he did, I think not.

Question.—Do you or do you not recollect that you stated to Mr. Holt that Mr. Gilmour had seen Miss Ferguson in his Mr. Holt's office and had told you that she was with child a second time?

Answer.—I do not recollect it. Mr. Railton has been frequently in my shop in the Lower Town. I don't recollect when he was last there. I should say it was during last summer. I don't recollect anything said by him or any subject that was spoken of.

Question.—Have you sufficient reliance upon your memory to enable you to swear positively that Mr. Gilmour has had no conversation with you relative to Miss Ferguson?

Answer.—I have not. I attend to my own business and in my commercial transactions I do not trust to my memory at all. I do not know whether my family or friends are acquainted with the defective state of my memory. The defendant is a man of large business, but I can't tell whether he is a wealthy man or not. I don't recollect anything particular in my conversation with Mr. Gilmour this morning unless that he enquired about the health of my family. Very likely he made some allusion to this trial. I don't recollect what particular words were used and don't know whether I used the word "recollection" in my conversation or whether Mr. Gilmour used the word recollection. Probably the conversation in question took place about an hour ago. I have heard the word "whore" mentioned by the Counsel interrogating me, but by no one else that I can recollect, nor the words "kept mistress" except by the said Counsel. Mr. Gilmour spoke to me about a letter that was in the plaintiff's attorney's office and it was for that reason I went there. I recollect that circumstance because it regarded my family. My family was interested in it. I think this was last summer some time. I do not recollect

the month. The reason why I told Mr. Holt this morning that he would make nothing out of my evidence was because I had no evidence to give. The only knowledge I have of the nature of this action is derived from my present examination. I can't say, whether I have heard before that an action for slander or defamation of character had been brought against Mr. Gilmour. I don't know that I ever heard it mentioned by this name. I have no idea of the time when I first heard of an action being brought against Mr. Gilmour, and I cannot say how often Mr. Gilmour has spoken to me about this action, I cannot recollect what he said upon the subject. I have no doubt that I am in the habit of forgetting things said to me. I have always had an imperfect memory. I have never permitted myself to state an untruth knowingly; I do not swear positively that Mr. Gilmour did not tell me that the plaintiff was a bad character. I swear nothing positively. I can't say whether my memory is more retentive at some seasons than at another. I cannot swear whether Mr. Gilmour at any time spoke to me any unfavourable words concerning the plaintiff.

*Cross-Examined.*—I have a daughter who is related to Mr. Gilmour. It is in consequence of her name being mentioned in a letter which was in the office of Messrs Holt & Irvine that the defendant in this case requested me to go to their office. The object I had in going there was to see that the name of my daughter was not mixed up in any shape or way with the parties connected with this suit.

The Court here stated, considering the relationship which existed between the witness and the defendant, his testimony should be laid to one side, and should not go to the Jury.

JAMES HAMILTON, of Quebec, Clerk, was then called and sworn. He stated himself to be the nephew of the defendant, who is his mother's brother.

The Judge then stated that he could not permit the examination of this witness, he being a relative of one of the parties within the prohibited degree, and that it was his duty to interfere, even when no objection was made by the adverse party.

Mr. STUART stated that he had no objection to the examination of this witness, but that he did not see what right the plaintiff had to summon the relatives of the defendant and endeavour to extract evidence from his private communications with him.

Mr. IRVINE said that there was no rule of the French law more clear than that no person could be examined as a witness who was a relative of either party, and admitted that the Judge had a right to interfere

to enforce this rule when no objection was made by the parties, but at the same time urged that there were exceptional cases in which the evidence of relations was permitted, and urged that this was a case under the exception. The intention was to prove by this witness slanderous words used by the defendant respecting the plaintiff, when no one was present but the witness—this was clearly a case in which the evidence of a relative must be taken or there would be a denial of justice—it was the case of facts occurring *en famille* which is admitted to be an exception. It was absurd to urge that the defendant was privileged to slander when speaking in his private office to a relative; were such a principle to be admitted, the defendant might through the medium of this witness have circulated rumours injurious to the Plaintiff's character, and it would be impossible for her to render the author of the injury responsible for it.

The Judge considered the evidence of this witness inadmissible for the reasons already stated.

JAMES NICOLL, Clerk, sworn; Examined by Mr. Irvine.—I am in the employ of the Defendant, and I know the parties in this cause. I am not related, allied or of kin to either party, nor interested in the event of this suit. I am a clerk to the Defendant, and have been so for six years. I know Mr. James Patton, who was examined as a witness in this cause. He is in the employ of Mr. Gilmour. I remember that during last winter, Mr. James Patton was absent from his business in the office. I recollect that Mr. Gilmour requested me to find him out. He did not tell me where he, Mr. James Patton, was likely to be found. I don't remember if I suggested to the Defendant any place where he was likely to be found, but I went to several places to look for him. The Plaintiff's name was not made mention of then by the Defendant in connection with Mr. James Patton. The Plaintiff was not spoken of by Mr. Gilmour until I found out Mr. James Patton. I told Mr. Gilmour where Mr. James Patton was, and Mr. Gilmour told me to bring him to the office. He left the place where I found him and made his appearance next day. I was not present at any conversation that took place between the Defendant and Mr. James Patton. I told Mr. Gilmour that I understood Mr. James Patton to be in the same house with the Plaintiff. Mr. Gilmour then told me to tell Mr. James Patton to come to the office, as it would not do for him to be laying up there. He said nothing more, with the exception not to come back unless I brought him with me, though it should take a week. When I told him that Mr. James Patton was in the same house with the Plaintiff, the Defendant said it would

never do for him to be there. He did not say any thing against the Plaintiff in this cause good or bad. I never heard the Defendant talk about the impropriety of Mr. James Patton marrying the Plaintiff. I heard no conversation between the Defendant and Mr. Railton in reference to the Plaintiff at any time. The only time I ever heard the Defendant speak about the Plaintiff was when he sent me for Mr. James Patton. The Defendant said nothing against Miss Ferguson only directed me to find Mr. James Patton. The language he used when I came back was that it would not do for Mr. James Patton to be remaining there with her. The Defendant told me that Mr. James Patton's father was in the old country, and for his mother's sake to bring him back. Mr. Gilmour never told me, nor did I ever hear him say, that it would be a disgrace to Mr. James Patton's family for Mr. James Patton to marry the Plaintiff.

**Cross Examined.**—By Plaintiff's Counsel. —Where did you find Mr. James Patton, and where was he when you made your report as above stated to the Defendant in this cause and where did you state to Mr. Gilmour that he was, when you made your report as above stated?

Mr. NICOLL.—The house where I went in search of Mr. James Patton was that of Mrs. Robitaille. I knocked at the door, and asked for Mr. James Patton, when the candle in the room was put out, and the day after he made his appearance at the office. Mr. Patton, when I was sent in search of him, had the keys of some drawers or safe which contained books which were required for the use of the establishment. It must have been between the 23rd December and the 10th January last that this occurrence took place, because James Patton left the office on the 23rd December last, and returned about the 10th January. It is a fact that his father was then absent in England. Mr. James Patton had been in the employ of the Defendant as a member of the firm of Duncan Patton & Co., for about five years previous. He entered their employment as a clerk and superintendent of the booms. I was sitting in the same office with Mr. Railton while he was in the service of Messrs. Allan Gilmour & Co. Mr. Railton was not present at the conversation which took place between the Defendant and myself. The Defendant in this cause never in my presence in his office, in presence of Mr. Railton, made use of any language derogatory to the character of the Plaintiff in this cause.

ALEXANDER BORROWMAN.—I know the Defendant only in this cause; I am not related, allied or of kin to, nor in the service of either of the parties or interested in the event of this suit. I have only heard of the Plaintiff in con-

nection with this cause. I have heard her name mentioned by Mr. Gilmour. The day before yesterday Mr. Gilmour told me that there was a prosecution against him by Caroline Ferguson, and that was the first time he ever spoke to me about her. I never heard him allude to her character.

Mr. HOLT offered, on the part of the Plaintiff, to give evidence in support of the special answer to the plea of prescription. He was prepared to establish that the Plaintiff had no knowledge that the Defendant had uttered the slander until within the year and a day, and offered the oath of his party which, he submitted, was proper and legal evidence. He referred to authorities upon the point, and cited M. Dareau's *Traité des Injures*, 2nd vol., p. 382.

Mr. STUART contended that the Plaintiff could not bring up evidence upon that point, inasmuch as the words, if proved, were not proved to have been spoken more than a year and a day before the institution of the action.

CARON, J.—*Primâ facie* the evidence of the Plaintiff herself is good evidence in proof of what she alleges as to the time when she first obtained a knowledge of the alleged slander. What she affirms and supports by her oath is to be taken as true, until proved otherwise. Mr. Dunod, in his *Traité de la Prescription*, as well as Mr. Dareau, held that that was the rule. But I am of opinion that under the circumstances of this case, and considering the proof which has been made, it has become unnecessary to enquire into that fact, viz., the time when she received the information; and I therefore rule that the Plaintiff be not examined upon the point.

Mr. HOLT then placed upon record a formal offer of the testimony so rejected.

JOHN GILMOUR, the Defendant, was called to answer upon *Faits et Articles*, and having appeared and been sworn, the Interrogatories were put and answered as follows:

First,—Is it not true that you have said of and concerning the Plaintiff, Caroline J. Ferguson, that she was a w—?—No.

Secondly,—Is it not true that you have said of and concerning the Plaintiff that she was a common prostitute?—No.

Thirdly,—Is it not true that you have said of and concerning the Plaintiff, that you could prove that she was a w—?—Never.

Fourthly,—Is it not true that you have said of and concerning the Plaintiff that she had been kept by some one in Montreal?—Never.

Fifthly,—Is it not true that you have said that you could prove that the Plaintiff had been kept by some gentleman in Montreal?—No.

Sixthly,—Is it not true that you have said of and concerning the Plaintiff, "She is a w...?"—No.

Seventhly,—Is it not true that you have

said of and concerning the Plaintiff, "She is a common w. . . ?"—No.

Eighthly,—Is it not true that you have said of and concerning the Plaintiff, "She has been kept by a gentleman in Montreal?"—No, never.

Ninthly,—Is it not true that at or about the time mentioned in the Plaintiff's declaration at Quebec, you spoke of and concerning the Plaintiff, in the presence of a person or of persons then living in Quebec or at Pointe Levi, the following words, "She is a w. . .," if not, then state when?—Never.

Tenthly,—Is it not true that about the time mentioned in the Plaintiff's declaration, you spoke of and concerning the Plaintiff, in the presence of one or more persons, the following words, "She has been kept by a gentleman in Montreal," if not about that time, state when?—No, never.

Eleventhly,—Is it not true that about the time mentioned in the Plaintiff's declaration (and state when) you spoke of and concerning the Plaintiff at Quebec, in the presence of one or more persons, the following words, "She is a common prostitute?"—No.

Twelfthly,—Is it not true that about or subsequently to the time mentioned in the Plaintiff's declaration, you spoke of and concerning the Plaintiff, in the presence of other persons, the following words, "She was kept by a gentleman in Montreal," and, if so, state when you so uttered the same?"—No, never.

Thirteenthly,—Is it not true that about or after the time mentioned in the Plaintiff's declaration, you spoke of and concerning the Plaintiff, in the presence of one or more persons, the following words, "She is no better than a common w. . . ?"—No, never.

Fourteenthly,—Look at the Plaintiff's declaration. Is it not true that you have spoken of and concerning the Plaintiff, the words therein alleged to have been spoken by you, "She is a w. . .," or words of the same import?—No, never.

Fifteenthly,—Is it not true that you have spoken of the Plaintiff the words "She was kept by . . . (meaning a certain gentleman) in Montreal," or words of the same import?"—No; I did not know that she had been in Montreal.

Sixteenthly,—Is it not true that you have spoken, concerning the Plaintiff, the words "She was no better than a w. . . in Montreal, and I can prove it," or words of the same import?—No.

Seventeenthly,—Is it not true that you have spoken of and concerning the Plaintiff, about the time mentioned in her declaration, in the presence of others at Quebec, the words "w. . .," or "prostitute," or "kept mistress," or words of similar import?—Never.

Eighteenthly,—Is it not true that an aunt of the Plaintiff was married to one of the

members of the family with which you are now connected by marriage?—I am not aware of it.

Nineteenthly,—Is it not true that several years ago you were present at a dispute or quarrel between one of the members of the family with which you are now connected by marriage and the Plaintiff? State in what year to the best of your recollection.—No, never.

Twentiethly,—Is it not to your knowledge that between the Plaintiff and some of the members of the family with which you are so connected by marriage, there were, some years back, family disputes and misunderstandings?—I am not aware.

Twenty-firstly,—Is it not true that in the month of August or of September last, or about that time you stated to Mr. William Hamilton, of this City, that the Plaintiff was with child?

No, never.

Twenty-secondly,—Is it not true that about the month of August or of September last, or subsequently to that time, you stated to other persons than the said Mr. William Hamilton, that the Plaintiff was with child?

No, never.

Twenty-thirdly,—Is it not true that previously to the institution of the present action, and state when, you stated to Mr. George Railton of this City, concerning the Plaintiff, that she had been kept by a gentleman in Montreal?—No, never.

The case of the Plaintiff was then declared closed.

Mr. STUART, was of opinion that no case had been made out against his client, and that he should not be called upon to enter upon his defence. He reviewed the evidence which had been adduced, and urged at considerable length that nothing had been brought out affecting the Defendant in the smallest degree. He was, therefore, entitled to demand that he should not be required to make his defence to a case which had no evidence whatever to sustain it.

CARON, J.—was not inclined to interfere, the Plaintiff's Counsel were the best judges whether they would put their case to the Jury, or not; he did not feel himself called upon at this stage to express any opinion whatever upon the weight of the evidence, and, moreover, had no power to cause a non-suit to be entered without the consent of the Plaintiff's counsel, Mr. Stuart would therefore be good enough to proceed with the defence.

Mr. STUART proceeded to address the Jury on the part of the Defendant.

He anticipated that the Plaintiff's Counsel, when they saw upon what evidence they had to rely for a verdict, as an act of justice to the Defendant, would have consented to a non suit; but

they had not seen fit so to do, and it became his duty to comment upon the facts elicited. In all his experience he had never met with so vexatious a case as that now submitted for the consideration of the Jury. The Defendant stood as a perfect stranger to the Plaintiff; he had a young man in his establishment who was living in improper intercourse with her, and through whom he was neglecting the duties of his office. Whilst this young man, Mr. James Patton, so much spoken of, was still absent from his business, a conversation concerning his conduct took place between the Defendant and his confidential Clerk. In that conversation, Mr. Gilmour made use of language of which no one could complain, and, because he did, he was forthwith brought before a Jury of his country to answer an action of slander. Really, there was never a case more harassing or oppressive, more disreputable or unwarranted. The charge against Mr. Gilmour, as set forth in the declaration, was that the Defendant maliciously spoke and uttered certain slanderous words of and concerning the Plaintiff, and that, by reason of the speaking and publishing of the same, she was greatly injured in her good name, fame and credit, and besides, lost her marriage with the Mr. James Patton in question. He (Mr. S.) would ask the Jury to say whether the evidence they had heard went to substantiate this charge; or at all bore out the accusation. First of all, this Miss Ferguson, the Plaintiff, set out that she was a person of chaste and moral behaviour, and professed a character for modesty and propriety of conduct. Had she proved this? Had she adduced evidence to show what her character was immediately previous to her residence at Mr. Patton's? No. The inference to be drawn from this omission of hers could not but be, that she was entirely unable to establish her character to be so unimpeachable as she asserted it was, and wished it to seem to be. She had it in her power to have brought up the persons in whose society she had lately mixed; and not having done so, it was for the Jury to consider what evidence these persons might have rendered had they been produced. It was alleged, that, on the first day of May, 1852, in the presence and hearing of several persons, the Defendant made use of certain false, slanderous and defamatory words, tending to asperse the character of the Plaintiff. Where, he (Mr. S.) would put it to the Jury, as men of intelligence, as men possessed of common sense, was there testimony to bear out any such allegation? Though every artifice and every subtlety had been resorted to by Miss Ferguson in order to obtain it, he was glad to say the Defendant still stood free from the accusation so unjustly brought against him.

The Jury law of this Country having been lately altered by a Provincial Statute, it was not now as formerly, left to juries to give a general verdict either for Plaintiff or Defendant, and assess the damages. Certain questions were determined upon by the Judges, as those only which should be submitted to and decided upon by the Jury. The questions left to the Jury in this case were six in number, and as follows:—

1. Did the Defendant speak and publish of and concerning the Plaintiff the defamatory words

set forth in the Plaintiff's declaration, or any and which of them, and at what time and place?

2. Were the said words so spoken and published by the Defendant maliciously?

3. Did the Plaintiff thereby lose her marriage, as alleged in the said declaration?

4. At what time was the Plaintiff informed for the first time that the Defendant had spoken and published the said words of and concerning her?

5. What was the Plaintiff's general character at the time the said words are proved to have been uttered and published of and concerning the said Plaintiff by the Defendant?

6. Hath the Plaintiff suffered damage by reason of such scandalous and defamatory words, and at what sum do you assess the said damages?

The fifth question, with respect to the Plaintiff's character at the time the words alleged to have been uttered, was submitted by the Court itself. Had any testimony been produced at this trial to establish her character? On the contrary, according to the evidence of James Patton she kept up an illicit intercourse with him for some fifteen months previous to the time when the slander was pretended to have been spoken. She had a child by him some months previous to the conversation in the Defendant's Office. She had been living as his mistress in some four or five places in the City of Quebec. Her position was a matter of notoriety, and at the same moment of time she was secreting Mr. James Patton from his employer, as appeared by the evidence of Mr. Nicoll, who proved that when he went to the house where she was residing, and asked for James Patton, the lights were put out. This was the lady, who whilst living in disreputable society, and guilty of immoral conduct for fifteen months, had the audacity to demand compensation for the injury her character sustained at the hands of the Defendant. If, indeed, she had proved she had a reputation free from reproach, "without blemish and without spot," she might come before a jury and ask for damages for any injury done it; but, instead of possessing virtue, modesty and chastity, as she asserted, she was proved by the evidence she herself adduced to have been of abandoned character, and of light and criminal behaviour.

There was a second surprising feature in this extraordinary case, which was that an attempt had been made to invade the privacy of Mr. Gilmour's Office, and extort from his confidential clerk the substance of a conversation had in the course of business. Counsel for the Plaintiff founded their action upon the revelation of a casual conversation between employer and clerk, and brought a suit for slander upon a communication made in a counting house. This was not all; they had recourse to more unwarrantable means. They endeavoured to make out a case against Mr. Gilmour, by examining his clerks, and those persons with whom he was on the greatest terms of intimacy, and to convict him upon evidence forced from the mouth of those with whom he was in business or friendly communication at almost every hour of the day. How far these efforts had succeeded, was apparent; and it was evident that the evidence the witnesses so produced gave, was the very reverse.

of what his (Mr. S's.) learned friends anticipated. It completely went to show that Mr. Gilmour had never made use of one slanderous observation, or one calumnious epithet towards the Plaintiff, or in reference to her character. In point of fact there was no evidence whatsoever in the case to establish that the words stated in the Plaintiff's declaration, or even words to the like effect had been spoken and published by the Defendant concerning the Plaintiff. There was one witness only who professed to state any thing that had fallen from the Defendant concerning the Plaintiff,—that witness was Mr. Railton. But even he could not state that the words laid in the Plaintiff's declaration had been used. He professed to give a conversation which he himself admitted was confidential, and took place on the occasion of the absence of Mr. James Patton from the employ of the Defendant, the witness himself and Mr. Gilmour at the time supposing Mr. Patton to be in company with the Plaintiff, which was the fact. Mr. Railton did not give the words used upon that occasion, and he admitted that he could not give them, but swore to the impression which was produced on his mind at the time by that conversation. Now it was a well settled principle of law that the impression of a witness under such circumstances is no legal evidence in a case of slander. The witness referred to was not even clear as to his impression of the words, because, as he himself was obliged to admit, he found it necessary to refer to a conversation in Mr. Hamilton's shop, and the impression produced then by such conversation, confirmed, he said, the impression formed in his mind of the conversation in Mr. Gilmour's office. There was no doubt, that Mr. Railton had been the origin of this suit being brought, and he (Mr. Stuart) had a right to assume this, since there was no other person but himself present at the conversation between him and the Defendant. The Plaintiff herself published to the world the words complained of, by instituting her action. She had two suits now pending against Mr. James Patton, one for breach of promise of marriage, and the other for the support of an illegitimate child, the issue of her unlawful connexion with him.

Another defect in the proof was that there were not two witnesses to each fact, as required by the French law. In this case there was not even one witness to prove the words charged against the Defendant, and if there were one, in the absence of two, it would require strong confirmatory circumstances to render his testimony complete proof; none of which existed as to the speaking and publishing of the words in question in this cause. Apart from all this, the principal witness in the case, Mr. Railton, who it seemed had thought fit to state in the office of the Attorney of the Plaintiff, his impression of a conversation in the office of Mr. Gilmour, which he admitted was confidential, appeared not to be on terms with Mr. Gilmour, in consequence of irregularities which existed in the manner of his keeping the books of Allan Gilmour & Co.; a fact that he was compelled by the Court to admit, when he stated that difficulties existed on this subject between him and the Defendant, which,

to a very considerable degree, must be considered as affecting his testimony, particularly as Mr. Gilmour swore, before the Jury, that he never used the words imputed to him.

Then again as to the question of malice. The very occasion upon which it was supposed the words injurious to the character of the Plaintiff were spoken, negatived all idea of malice; the words were stated to have been spoken between Christmas, 1852, and February, 1853, at which period of time, and for several months previous, the Plaintiff had an illegitimate child by Mr. James Patton, and, as he stated, she was then living with him as his mistress. It was upon the occasion of his being absent from his duty, he being sometimes in charge of the extensive business of the firm in which the Defendant was a partner, and having the books of the office under his care, that both Mr. Railton and the Defendant supposed him to be in company with the Plaintiff. It was whilst the Plaintiff was living in this disreputable manner, that the Defendant was charged with using the words specified in the Plaintiff's declaration. It was in relation to James Patton that the conversation took place, and in connection with the business of the Defendant's office. It was in consequence of the immoral conduct of these parties, the Plaintiff being one, that the subject was forced upon the Defendant's attention. The conversation, according to Mr. Railton, was private and confidential, arising out of the business of the office, and Mr. Railton swore that he never repeated it until he was subpoenaed as a witness on this trial. Where then was the evidence of publication? There was not a particle of testimony to establish, that on any other occasion, the Defendant used any language injurious to the Plaintiff. Had he been actuated by malice, he certainly would have selected some other occasion. Mr. Duncan and Mr. James Patton proved that he never used such language to them, and Mr. Borrowman swore that he never did to him. How could they (the Jury) say that the Plaintiff lost her marriage from the speaking and publishing of the words stated in the Plaintiff's declaration, when Mr. Railton swore that the conversation in Mr. Gilmour's office was not communicated to any one until two or three days before the trial, and Mr. James Patton, one of her own witnesses, stated, that he did not refuse to marry her in consequence of anything that fell from the Defendant? To substantiate this portion of the charge, it was absolutely necessary to prove the precise words, and the loss of marriage as the consequence. The Plaintiff herself had established the contrary, and besides it was a question to be considered, whether she had ever promised or agreed to marry Mr. Patton.

The Defendant was charged in the declaration with having used the language referred to in May, 1852, which cause of action, if it then existed, was prescribed, unless it came to the knowledge of the Defendant within a year and a day previous to the action brought, which the Plaintiff alleged it did. Now a different cause of action, namely, words said to have been used between Christmas, 1852, and February, 1853, had been given in evidence, thus setting aside

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the matter really in controversy between the parties, and substantiating a new one. The Defendant, in fact, was called into Court to defend one cause of action, and the evidence went to establish another.

Mr. STUART strongly appealed to the Jury to say whether they could, in the discharge of the serious duty they were sworn faithfully to perform, approve of the immoral conduct of which the Plaintiff, upon her own testimony, had proved herself guilty. He was convinced, from the respectability of the Jury, of which no person was better aware than he was, that they would not and that they had too much regard for the interests of society to stamp such conduct with their approval. If they did, it would be an encouragement to young men in mercantile establishments to pursue a course of conduct similar to that of the young gentleman in Mr. Gilmour's office; the consequences of which would be most ruinous to them and their employers.

Under all the circumstances of the case, he (Mr. S.) was of opinion that the Defendant was clearly entitled to a verdict at their hands, from the total absence of the words imputed to the Plaintiff, or of publication before action instituted, on the ground that there was no evidence of malice,—and that there was no evidence of the loss of marriage, arising from the use of the words, even had they been uttered. The present suit (he said) was nothing more or less than an attempt by the Plaintiff to extort money from the Defendant, because he was known to be a man of means, and he (Mr. S.) trusted that the Jury would evince their disapprobation of such an attempt on her part, by rendering the verdict he conceived, law, justice and the oath they had taken, obliged them to render—namely, a verdict in favor of Mr. Gilmour.

Mr. Stuart then called and examined the following witnesses on behalf of the Defendant.

**DUNCAN PATTON.**—I was formerly a partner with the Defendant in this cause. All commercial intercourse has now ceased. It was towards the 1st of October that Miss Ferguson came to reside in my family. I became acquainted with her in consequence of an advertisement in one of the city papers. In consequence of that advertisement I wrote a note to the office of that paper requesting her to call at my house, at Indian Cove. On my return from Quebec to Indian Cove, Mrs. Patton informed me that a Miss Ferguson had called in my absence, and had made application for the situation of teacher or governess. At the time I speak of, I had not yet seen her. She left word with Mrs. Patton for me or any other party to call on Mr. McGie, for her character. On the following day, I accidentally met with Mr. McGie in the street. I accosted him, and informed him that a Miss Ferguson had called upon me, and had requested me to call upon him for a character. Mr. McGie, in answer to my question, informed me that the Plaintiff was living with his family, that she had been teaching school at St. John's, oppo-

site Montreal, and that he believed her character was good. It was upon the representations of Mr. McGie to me and of me to Mrs. Patton, that we engaged her, from the 1st October, 1851, till May, 1852. She wished to be engaged for a longer period; but Mrs. Patton declined doing so. After being in my family for a couple of months, I heard reports injurious to her character, and considered it my duty to make further enquiries. I made enquiry and found that her character was rather light but nothing at that time to induce me to discharge her—light previous to her coming into my establishment. I made no further enquiry at that time. I was induced to believe that those reports were erroneous. Shortly after that, I went to England. I think I left on the 22nd December, 1851. Before I left, I saw no impropriety of conduct in my house. I mentioned these reports to Mrs. Patton, but we ascribed it to the general way in which young ladies' characters are generally attacked in this city. On my return from England, about the latter end of April, 1852, I found reports in circulation still further injurious to her character. I made investigations as to her general character and found it licentious and degraded. This was about the 20th of April, 1852. I mentioned the circumstance to Mrs. Patton, but as it was so near the termination of her engagement with us, which was to expire on the 1st May, 1852, I came to the conclusion not to discharge her, in order not to injure her character. On the 1st of May, I desired Mrs. Patton to get rid of the Plaintiff; gave her the money to pay her salary, and sent her off. She wished to remain, but we refused. I never heard any question of marriage between my son, James Patton, and her. In consequence of these reports, I advised my son and commanded my daughter not to be seen in the streets with the Plaintiff.

**Cross Examined.**—My son and myself did not live together, partly in consequence of his intimacy with the Plaintiff. For about one or two months before the arrival of the Plaintiff at my house, my son did not stop at my house. He conducted the business of the establishment with me. He resided a short distance off, and was still in the habit of visiting the house. I believe before the Plaintiff came to my house my son was suffering from my displeasure, which I manifested by seldom speaking to him, except on business.

**WITNESS.**—I desire to know from the Court whether Mr. Holt has a right to enquire into what passes in my family. It is a course he has been following from the beginning.

Mr. HOLT explained to the Court that he had no desire to compel the witness to state anything about his private or family affairs, but the Jury would recollect that the witness, James Patton, had coolly stated that he had been in a manner entrapped by the Plaintiff,

that she had made advances to him, and had even written him a note requesting him to come home, before she had ever spoken to him. These, he was instructed to say, were some of the malicious falsehoods in which that witness was in the habit of indulging. What he (Mr. H.) was now desirous of shewing, was, how it was that sympathy with and affection for James Patton were excited in her breast, and that it was the severe treatment which that person had experienced, perhaps very deservedly, in his father's family which first interested her in his behalf.

WITNESS (with heat)—Very well, come on.

CARON, J., thought it would be well if the Plaintiff's Counsel did not go too far into particulars. The Defendant's Counsel would claim the same right, and the consequence might be that a great many things would be said that did not affect the case at all.

*Examination continued.*—I am not aware whether or not I forbade his remaining at my house or compelled him to remain at my cul-ler's house. He always dined with us on a Sunday. I do not recollect having had any quarrels with him of any material consequence.

MR. HOLT.—Is your memory like Mr. Hamilton's, somewhat defective?

WITNESS.—Not at all. I can tell you something about your partner, if you ask me.

MR. HOLT (to the Court)—The answer of the witness is an extraordinary one, and can only be looked upon as sheer impertinence. But if the Court will permit, as it is evidently the intention of the witness to convey the idea that he is in possession of something derogatory to the professional or private character of one of the Plaintiff's Counsel, although it is beside the merits of this case, I will require the witness to say openly what he has to say.

MR. IRVINE.—May it please the Court, I am completely ignorant of anything that the witness can possibly have to say concerning me, but I have no objection to his stating plainly what he means by his insinuation, and of this I feel confident that I shall not be prejudiced in the estimation of Your Honor, or of the Jury, or of any one present in Court, by anything that may fall from such a person as Mr. Duncan Patton. (General applause.)

His Honor intimated that it might be necessary to clear the Court, if the proceedings were interrupted again.

*Examination continued.*—It was Mrs. Patton who made the agreement with the Plaintiff; I was not present. I am not aware of the Plaintiff having wished to leave some days before the month of May; far from it, she wanted to remain for some days after the first of May, to make up for some days she had lost by sickness and other ways. She used to be in town from Friday until Tuesday, repeatedly. I do not recollect of my

being about to go to Upper Canada. I did not request her to remain, to the best of my knowledge, and I am certain I did not. I have assisted Mr. Gilmour, so far as to tell of certain evidence that might be adduced here. I furnished him with no list. I handed a list of witnesses to Mr. Stuart. I have desired Mr. Welsh to attend, as well as my son and daughter, in consequence of subpoenas. I supplied Mr. Stuart with about four witnesses; they were intended for the Defendant, and may be for the Plaintiff. The Defendant passes with me as a man of means, and I believe he is a person of considerable influence, that is, I mean the house. I have had a great many conversations with Mr. Gilmour upon the subject of my son's and Miss Ferguson's affairs. I have not to the best of my knowledge heard Defendant allude to the Plaintiff's being in Montreal. I have heard him say nothing to injure her character. The conversations I had with Mr. Gilmour were commenced by me first, when I was deploring the infatuation of my son, in being led away by the Plaintiff. Mr. Gilmour expressed his regret that it should be the case; the reasons were, that he was a young man of a fair education, and he had a perfect knowledge of timber, inside and out. I have heard the declaration read, and I swear that Mr. Gilmour never used any of those words contained therein to me, or in my presence; and I never heard him say anything to injure the Plaintiff's character. I am not aware that I have been to see witnesses with Mr. Gilmour. I have above given the purport of all I ever heard the Defendant say against the Plaintiff. When expressing my regret to Mr. Gilmour that my son had been in communication with this lady, he generally nodded his head, and seldom or ever spoke. I am not aware that he ever mentioned Mr. Gisborne's name in connection with a lady, and I say he never did. Mr. Gilmour generally nodded his head; and when he did not nod his head, he did not speak.

*Re-Examined.*—The whole three of us were subpoenaed by the Plaintiff.

JOHN ALFRED TORNEY, of Little Falls, sworn.—I formerly resided at Quebec and boarded at Russell's; I know Miss Ferguson, the Plaintiff in this cause. I have met the Plaintiff in several places, and she was living at two or three places when I knew her, that is, she changed her residence from time to time. I became first acquainted with her, I think, in the winter of 1848. I think she was then living with a Notary, a relative of hers, in St. Roch or St. John Suburbs, but I am not certain. I think she went to one of the nunneries, either before or after that she then went to reside at Payne's. I have met her at Payne's frequently; it was previous to the fall of 1851. She created a great many remarks. Her character was light for chastity and propriety

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of conduct at that time, that is previous and up to the fall of 1851.

*Cross examined.*—I do not mean to say that she was unchaste; she was reputed to be an unchaste person. Her character was spoken of very lightly at that time; she was careless in her deportment, and not sufficiently guarded in the way in which she conducted herself.

*Re-examined by Defendant's Counsel.*—In what way was she generally careless and unguarded as you have expressed yourself in answer to the question put to you by the Attorney for the Plaintiff?

MR. TORNEY.—By coming to the Telegraph Office, and remaining in a room there alone with Mr. Gisborne. She was then living at Payne's Hotel, but she used to come to the Telegraph Office, before she went there, Mr. Gisborne was an old acquaintance of many years standing. She was boarding at the time with Mrs. Payne's family.

WILLIAM WALKER, *Merchant*, sworn.—I was residing in Quebec, and in the fall of 1848-49, I became first acquainted with Miss Ferguson, the Plaintiff in this cause. She lived in Mrs. Payne's family, and I was living there at the same time. I thought her a giddy girl at that time. I believed her chaste enough at that time, 1848; and, as to propriety of conduct, I believe she was giddy.

WILLIAM WELSH, *Farmer*, sworn.—I know Miss Ferguson, the Plaintiff in this cause; I have known her for about seven months. I was living in the fall of 1851 in the family of Mr. Patton when Miss Ferguson, the Plaintiff in this cause, went to reside in Mr. Patton's family, where she resided seven months. After she had been some time in Mr. Patton's family, I saw some of her conduct that was not very good. I could not say that her general character was very good when she resided at Mr. Patton's. Her general deportment was not very good.

JAMES WELSH, *Culler*, sworn.—I have known the Plaintiff since she went to reside at Mr. Patton's; that was in 1851. Since I have known her I have heard several reports about her character that were not very good; that was about the coming on of the spring.

*Cross examined.*—The last witness is in Mr. Patton's employ, and I in Mr. Gilmour's.

MR. STUART here desired the Clerk of the Court to call over the names of the witnesses whom he had subpoenaed. No others appearing, he declared that the case for the defence was closed.

MR. HOLT requested that the witnesses whose attendance he had required on the part of the Plaintiff, should be called. He stated to the Court that they were merely witnesses of character, and he trusted that not much time would be taken up in examining them.

MR. STUART objected. It was too late. Had

the learned counsel for the Plaintiff thought it necessary to establish her good character, he should have offered the evidence in proper time. His declaration stated that at the time when the slanderous words were used, she was in the enjoyment of the respect and esteem of her fellow citizens, and that she had never before been suspected of being guilty of any of the offences imputed to her. Testimony to that effect should have formed part of his evidence in chief, and could not be admitted now.

MR. HOLT was much surprised that his learned friend should take such an objection. It was not only unfair in itself, but it was without any foundation as a point of practice. It had been altogether in the discretion of the Plaintiff's Counsel to give such evidence in opening or in rebuttal. How did they know that the Defendant would think proper under the plea of the general issue, to attack the Plaintiff's character? Though he had perhaps, the right to do so, it was hardly to have been expected that Mr. Gilmour, averring that he had never said anything against her, should now attempt to blast her name and character for ever. And would it now be said that she was to lie bound hand and foot, at his mercy, and with this ungenerous attempt on his part to ruin her, have not the right to say one word in remonstrance or shew that she was not the bad woman that he would represent her. This endeavor to shut out evidence of her real character was as cruel as it was illegal. Mr. H. then referred to authorities upon the point.

CARON, J.—The character of every citizen is presumed to be good and unblemished, until the contrary appears. The Plaintiff has unquestionably the right to call witnesses to support her character, which the Defendant brought up evidence to impugn; and the learned counsel for the Plaintiff was right in not offering that evidence at an earlier stage.

ROBERT CHAMBERS, *Advocate*, examined.—I have known the Plaintiff from the time since she was 5 or 6 years old. I was for a time the legal adviser of her mother who entrusted me with her business. About the age of 16 years, she was obliged to leave her mother on account of harsh treatment. She left Quebec for Montreal, where she resided for a time; she then returned to Quebec and endeavoured to obtain some assistance from her friends. I cannot say that I knew her intimately, except such intimacy as is usual between an attorney and client. Until the time I received a subpoena in the case of Ferguson and Patton, I never heard any thing against her character nor any thing to her prejudice.

*Cross examined.*—Since the time she went to reside at Mr. Patton's I don't think I have seen her more than once, and I don't think I

have heard any thing of her one way or the other. She was occasionally absent in Montreal, where she resided, I believe, with an uncle, as I heard, where she remained for the first time twelve or eighteen months. Her first return to Quebec was very short; she returned almost immediately to Montreal. How long she remained there, I cannot say; but some time afterwards I heard of her keeping school in one of the parishes of this District. She afterwards resided in Quebec.

*Re-examined.*—Reports to a certain extent prejudicial to her character, might have circulated without my knowing it; in fact I have heard remarks made which, with persons not well acquainted with the world, might have had a prejudicial effect against her. I allude to such remarks as are frequently made respecting a young lady who resides apart from her relations, without any protector, by persons who otherwise may know nothing against her.

**CHARLES PANET, Advocate.**—I have known the Plaintiff for several years, from her childhood up to the present time, having been for several years the legal adviser of her mother. I had excellent opportunities of knowing her character to be generally good. That, as far as I know, was the reputation she enjoyed.

*Cross examined.*—I have not followed the course of the young lady for the last two years. I have seen the young lady frequently, but she has been in the habit of going to different places. For several years she has been going backward and forward, between Montreal and Quebec, and several other places: so she informed me. Her mother resides in Quebec, to the best of my belief. For several years, she could not agree with her mother, and did not reside with her mother for several years. I understood she resided at Mrs. Payne's boarding house, during what time I cannot say. Since 1851 down to this time I had not heard anything detrimental to her character, until this unfortunate affair, which she told me herself, when she apprized me that she was in law with Mr. Patton.

**SOPHIE TREMBLAY, Boardinghouse-keeper,** sworn.—I have known Miss Ferguson since the month of December, 1849. She lived at my house. I keep a boarding-house. The general character of the Plaintiff was that of a good young girl: She was a good person whom I esteemed highly. During the whole of the time she remained at my house she bore the same reputation.

*Cross examined.*—I first became acquainted with the Plaintiff in the month of December, 1849. She boarded at my house for nine months, that is until the month of August following. She told me that before coming to board with me she had boarded at Mrs. Payne's. When she left my house she went to be governess at a Mr. Pouliot's, at L'Islet;

she had no occupation while living with me. After she went away I did not bother myself any more about her.

*Re-examined.*—I have not been paid for the Plaintiffs' board, she told me that Mr. Alford would pay me. Mr. Alford is her first cousin.

**THEOPHILE DUFORD, of the City of Quebec, Clerk, being duly sworn, says.**—I have known the Plaintiff since she was a child. She was going to school, supported by her uncle in Montreal. Her general character was good and satisfactory enough for me, other wise I should not have invited her to my house and parties. She received Mr. James Patton's visits after she left the Pattons, at Point Levy.

**JAMES BANCROFT, Teller in the Quebec Bank, sworn.**—I have known the Plaintiff for about four years. I became acquainted with her at the house of Mrs. Saxe, where she boarded. Her character, so far as I know, has been perfectly good. Witness knows that she has been at St. John's, teaching in the Christieville endowed school, or school belonging to the Church. Her character as far as I can learn was good. She was received in and associated with the first families. The Reverend Mr. Bancroft is my brother, and resides there.

*Cross examined.*—I have known the Plaintiff for four years. She came to board at Mrs. Saxe's, a private boarding house, and she had no occupation. She came in December and remained to my knowledge until May, and I understood until August. So far as I can remember she went then to St. John's, in the District of Montreal, as I understand. I can't tell you where she has been since. I have heard that she went to Montreal. I have lost sight of her from St. John's where I saw her one summer.

**F. W. G. AUSTIN, Advocate, sworn.**—At the termination of 1849, or at the beginning of 1850, I became acquainted with the Plaintiff, through the medium of a highly respectable family which she visited. And I had frequent opportunities of seeing her, as she resided about a hundred yards from where I resided myself. I never heard any thing derogatory to her character, until the subject of litigation now before the Court was spoken of some two or three months ago.

*Cross examined.*—I do not know anything at all about her going to reside at Montreal. I do not know how long she was teaching in St. John's. I believe it was one summer.

**ALFRED LANGEVIN, Clerk, sworn.**—The general character of the Plaintiff is very good. I have known her since 1849.

*Cross examined.*—I knew her at Mrs. Saxe's, and lost all traces of her since she left there.

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**THEOPHILE HAMEL, Painter, sworn.**—I became acquainted with the Plaintiff in the month of June, 1850; her general character is good.

**Cross examined.**—She then boarded at Mrs. Saxe's. I did not know her before seeing her there, nor am I aware where she has lived since. A year after, I learnt that she had resided at Mr. Patton's.

Mr. Holt desired the Clerk to have called other persons who had been subpoenaed on behalf of the Plaintiff, but no other witnesses answering to their names, he declared that he would rest the Plaintiff's case upon the evidence as it was.

He desired to know from the Court whether it was the wish of His Honor and of the Jury that he should then proceed with his reply upon the whole case. It was then late, nearly seven o'clock, and if the indulgence could be accorded, he conceived that he should be able to perform his duty with more advantage to his client on the following morning than at that late hour, when, all engaged in the trial, must feel some fatigue and be anxious to get to their respective homes.

His Honor stated that it was altogether a question of convenience to the Jury. He was willing to sit as long as they pleased; but as it was so late then, and the reply and his charge might take up some time, perhaps much would not be gained by proceeding then. It was for the Jury to say whether they were willing that the Court should adjourn to the following morning or not.

After some conversation among the Jurors, some being willing to remain till midnight, and others being of opinion that it was time to go home for the day, they stated to the Court that the majority was for adjourning.

Whereupon the Court was adjourned till the following day.

### THIRD DAY.

FRIDAY, 2nd Dec., 1853.

[The names of the Jurors having been called over and answered to, the trial is continued.]

Mr. STUART stated that he had a right to address the Jury upon the evidence in rebuttal adduced by the Plaintiff, and proceeded to say,—That the Plaintiff had altogether failed to establish her good character; that the witnesses whom she had called had not had fair opportunities of forming a proper estimate of her character, and were persons who had not known her for any length of time. They had, moreover, spoken of her character at a period of time different from that laid in the declaration, and she had wholly failed to make out that at the time when the supposed words were spoken, her character was good. It resulted from her own evidence that she

had been knocking about from place to place without any settled abode, and it was established by the evidence of Mr. James Patton, that about the very time the supposed misrepresentations were made concerning her, she was living at Mrs. Faucher's, a low house on the Little River road, and this was the person who now wished to persuade them that her character was good. Mr. Duncan Patton, in his evidence, had stated that she was recommended to him by Mr. McGie. Why had not that gentleman been brought up by the Plaintiff to say what her character was; the only inference which they could draw from his not appearing as a witness was that she well knew that he could say nothing in her favor, but perhaps something against her; she had not brought witnesses from the different places where she had been staying, but merely persons who had known her some time ago and very slightly. But, if anything were wanting to overthrow the evidence which she had adduced and by which she had expected to establish her character, it was the notorious fact that long before, and at and after the time when she pretends she was so slandered by Mr. Gilmour, she was keeping the company of the witness, James Patton, as his mistress. Mr. Stuart enlarged at considerable length upon this point in the case, and represented to the Jury the great danger and injustice of permitting persons of this character to come before a Court and claim the same regard and consideration as those who have no blemish upon their reputation. He asserted with confidence that they could not regard her evidence, as to character, of any weight.

Mr. Holt addressed the Jury in reply. Long speeches were not now the order of the day, he would not, therefore, follow the example of his learned friend. He expected to obtain their verdict, but not through the merits of a speech. His object now would be to lay before them the law and the facts of the case in such a way, consistently with truth and justice, as he judged best calculated to advance the interests of the Plaintiff.

First,—Was the speaking of the words proved against Mr. Gilmour? Mr. Railton was the first witness called. It was quite evident to every one, from the manner in which his testimony was given, that he was unwilling to say anything which might injure his former employer, or rather, that he would say no more against Mr. Gilmour than the strict observance of his oath required. The learned Counsel for the Defendant endeavored to persuade them that there were differences between the witness and Messrs. Allan Gilmour & Co., which should induce them (the Jury) to attach no weight to Mr. Railton's evidence, but he (Mr. H.) would, with confidence, leave it to them to say whether there was anything in the character or manner of Mr. Railton, or in the nature of the differences alluded to, to justify the Defendant's

Counsel in imputing to Mr. Railton unworthy motives and revengeful feelings. Mr. Railton's reluctance to give evidence shewed that he had no ill feeling whatever towards Mr. Gilmour, and there was nothing before them to weaken or impugn the character which Mr. Railton had always borne as a gentleman of high honor. What was his testimony, with reference to the use of the words? That Mr. James Patton (who was in the employ of the Gilmours and Duncan Patton) was absent, and that the Defendant was desirous of finding him; his name and that of Miss Ferguson being associated together, Mr. Gilmour said, that it was an unfortunate affair, to which Mr. Railton answered, that if Patton liked the girl he ought to marry her; that Mr. Gilmour then said that it would never do, that she was a *person of loose character*, and *had been kept by a gentleman in Montreal*—and Mr. Railton adds, that, to the best of his recollection, the word "whore" was used by Mr. Gilmour on the occasion, with reference to the Plaintiff. Were this evidence of Mr. Railton's unsupported in any way, the Plaintiff could not have expected to succeed. Mr. Railton spoke positively enough, though it was only to the best of his recollection—there was no reason to believe that his memory had at all failed him, or was clean gone, like Mr. Hamilton's. In all great cases, strong feelings were excited, and parties and witnesses often went so far as to forget that they were under oath; he did not mean to say that wilful and corrupt perjury had been actually committed in this case, but certainly they could not come to the conclusion that Mr. Gilmour had not uttered the words, unless they believed that Mr. Railton had been guilty of that crime. But the system of law in force in this country required the evidence of more than one witness, in a case of this kind; not that there must be two witnesses present at the occurrence of the particular fact, but that the testimony of one witness should be corroborated or confirmed in some way by the testimony of another. The Plaintiff was not without such corroborative testimony; the Jury had had it before them; it had been procured with extreme difficulty, drawn from the very throats of unwilling witnesses, men under the control, under the thumb of the Defendant, and, moreover, having a strong interest to accomplish the overthrow of the Plaintiff in this cause; burning with an intense hatred towards her, resolved to work her destruction, if possible, and acknowledging no scruples of conscience, or any other bond than that of the conspiracy which they had formed with the Defendant. One of these witnesses was the coarse and treacherous libertine to whose passionate appeals she had listened in an evil hour; the other was his father, Mr. Duncan Patton, that worthy man, who had so identified himself with the Defendant in this matter as to hunt up evidence for him, and to furnish his Attorney with a list of witnesses; that fair-play-loving citizen, who thought that nobody was aware how completely he was under the influence of the Defendant, or how transparent was the mask which he had put on.

[DUNCAN PATTON, (in a loud voice)—It is not

true, it is not the case, sir; I have nothing to do with Mr. Gilmour.

[A JUROR—I don't think that these interruptions ought to be allowed. Mr. Stuart was not interrupted in his address, and we should like to hear what Mr. Holt has to say; if he says any thing which is not borne out by the evidence, it will have no effect upon us.

[THE COURT—Mr. Patton, if you don't keep quiet you will be put out of Court].

It was as clear as the daylight which was then in the room, that these witnesses had come forward, resolved to state anything and everything which might have a tendency to relieve Mr. Gilmour, in whose power they were to a great extent, and thereby to crush the Plaintiff for ever, it being a matter of little consequence to them whether she was ruined, body and soul, or not. Fortunately for the Plaintiff, these witnesses had been examined in open Court, not by the *enquête* system, where the greatest hypocrite may appear, upon the face of the deposition, an honest and truthful man. The Jury had seen how these men had prevaricated, quibbled, suppressed the truth, and contradicted one another. The younger of the two had unblushingly proclaimed his own turpitude, and appeared to glory in his shame, and one would hardly be justified in saying, judging from the manner of the elder, that he knew what shame was. But from all their windings and turnings the truth came out—the obscurity in which Mr. Gilmour and the Pattons had designedly involved the whole affair had been pierced, he (Mr. H.) was sure, by the intelligence and experience of the Jury. Referring, first, to the evidence of the son, they found that *something* was said to him by Mr. Gilmour of Miss Ferguson. Take even the very mild version of it given by the  *tongue* of this witness, and it amounted to something important: that Mr. Gilmour had told him that *Miss Ferguson had been boarding a long time at Mrs. Payne's, and was often seen in the company of a Mr. Gisborne*—and had also advised him *not to marry the girl* unless he had a strong affection for her. He *does not recollect* of Mr. Gilmour having talked of *Montreal* at all. Was there anything extraordinary in the Plaintiff's having "boarded a long time at Mrs. Payne's," that the Defendant should *therefore* advise him not to marry her? Was the circumstance of her having been often seen in the company of Mr. Gisborne, of itself, so strong a proof of the wantonness of the Plaintiff, that the Defendant should feel himself for that reason, called upon to advise the witness not to marry her? Had Mr. Gilmour said, had either of the Pattons ventured to say, was there any evidence before the Jury, that the gentleman alluded to was a character so notoriously bad as to render the circumstance of a lady being seen with him, a stain upon her character? Mr. Gisborne was a gentleman well known here, and very favorably so in every respect. What then were they to conclude from the version given by Mr. Patton, junior, of Mr. Gilmour's expressions? Would it be unreasonable to infer that they were *stronger* than was represented by the witness, stronger than was represented by his lips. The attitude, air and expression of the witness plainly

told that he fancied he was triumphing over the Plaintiff when he so qualified Mr. Gilmour's statements, and that they, the Jury, would be compelled to swallow the milk-and-water version which he chose to give them. It was for them to judge whether, or not, Mr. Railton's testimony was corroborated by what had escaped from this witness, and by his manner of giving evidence. The Court would tell them that they were the proper and the only judges of the evidence, and that they should most carefully weigh it all. He (Mr. Holt) begged next to direct their attention to Mr. Patton, senior's, version touching the expressions used by Mr. Gilmour, in speaking of the Plaintiff. That gentleman (Mr. P.) testified that he had had a great many conversations with Mr. Gilmour upon the subject of his son's and Miss Ferguson's affairs; that he had been deploring the infatuation of his son, and that Mr. Gilmour used to express his regret at it; and what was the reason now put into Mr. Gilmour's mouth by the witness, why the son should not marry this lady? Why, simply, because "he was a young man of a fair education, and had a perfect knowledge of timber, inside and out." The perceptive powers of the witness might be so strong as to enable him to see at once that this was a good reason for not marrying, but he (Mr. H.) had to confess to a dulness of comprehension upon this point, and he would not be much surprised if the Jury declared themselves as much puzzled as himself. Attempting to palm off such a reason upon them, almost induced one to believe that there was as much folly as wickedness in the composition of the witness. They would recollect that as it did not suit his purpose to give what Mr. Gilmour said upon different occasions, he (the witness) would not commit himself further than to state that "Mr. Gilmour generally nodded his head, and when he did not nod his head he did not speak!" This looked very much like a negative pregnant, and here, again, as with respect to James Patton's testimony, they (the Jury) alone were to say when the witness adhered to the truth and when he departed from it, and what was the substance of his whole testimony, and whether Mr. Railton's evidence was strengthened or weakened by the very strange, and in many respects, contradictory statements of these two witnesses. Upon this point, the proof of the use of slanderous expressions by Mr. Gilmour concerning the Plaintiff, he would not trespass further upon their patience.

They were next to consider, if the words were spoken, whether they were uttered maliciously, or not. The Court would tell them that there were two kinds of malice; malice in fact and malice in law; that malice in fact means *ill-will entertained towards an individual*; malice in law, *a wrongful act intentionally done, without just cause or excuse*. In actions for slander, malice in law was always inferred from the mere publishing of the slanderous matter, and the Honorable Judge who presided would inform them, that if they considered the words proved, they would be bound to consider them to have been maliciously used, unless that legal inference were rebutted by proof, on the part of the Defendant,

of such an occasion of publishing as furnished a legal excuse for the act. He (Mr. H.) was willing that the Defendant should profit to the fullest extent by that sound principle of law which afforded protection to many communications, though they should deeply affect the character of individuals, but it was to be borne in mind that the law did not afford that protection merely because an actual intention to injure was wanting, for if a man uttered scandalous words likely to occasion injury to another and to subject him to obloquy, disgrace, and temporal damage, he was presumed to have contemplated the consequences of such words—and if the speaking of them derived no excuse from collateral circumstances, none could arise from the consideration that the mischief was not actuated by any deliberate or malicious intention to injure, beyond that which was necessarily to be inferred from the act itself. What they (the Jury) had to consider upon this important branch of the case, was, *whether the circumstances of the speaking were such as to furnish an excuse, a legal and reasonable excuse, for the use of the words, or not*. Then, under what circumstances was it that the words were uttered, and what did Mr. Gilmour say? Mr. Patton was absent from the office, and was supposed to be in the company of a lady to whom he was not married, but with whom he kept up an improper intimacy. His presence was required at the office. Supposing Mr. Gilmour to have had nothing particular in his mind against the Plaintiff, what course would he then have naturally followed? Would he not, then, as the master of a household, as the head of a large mercantile establishment, as the prudent, moral man, his Counsel had described him to be, would he not then have remonstrated with Mr. James Patton, and distinctly told him that he must either leave his service, or reform? that he must give up either the Plaintiff, or his, Mr. Gilmour's, employ? or would it have been improper on the part of Mr. Gilmour to tell the young man that it would be much better for him to marry and settle down, than to continue a life of that kind? Mr. Holt took it that most of the gentlemen composing the Jury before him would have adopted some such language, would have given some such advice, to any person in their employ so conducting himself. Had the Defendant adopted any such course? Did he, on the occasion mentioned by Mr. Railton, *remonstrate with Mr. Patton*? It was but too true, that the utmost stretch of liberality towards Mr. Gilmour could not construe the expressions then made use of by him into anything like sound or fair advice, or, to use the words of an eminent writer, a *confidential communication, made in the ordinary course of lawful business, from good motives, and for justifiable ends*, such as the law or morality could recognize as an excuse. Mr. Railton might certainly have been the confidential clerk of Messrs. Allan Gilmour & Co., but did that render every statement made to him by any member of the firm a *confidential communication*? The learned Counsel for the Defendant had tried to make that out, but it was playing upon words with a vengeance; he had next urged that it was private and confidential, because spoken *in the*

office; but he (Mr. H.) had to ask his learned friend who had pressed the point with all that gravity which he knew so well how to assume, whether it was the place which protected a communication, and not rather the nature of the communication itself? Did his learned friend pretend that the office of Messrs. Allan Gilmour & Co. was hermetically sealed, that if the source of slander were there, the poisoned stream would never flow or circulate beyond the precincts of the counting room? Could any one of that eminent firm pour into the ears of each and every of the clerks of the establishment such scandal or slander as he might see fit, and the injured party have no redress, because they were all considered confidential clerks, and the words were spoken within the office door, instead of in the passage outside, or upon the pavement in the street? The distinction was a novel one, and all the credit of it was due to his learned friend. They, the Jury, had probably decided in their own minds how they would have acted, if placed, with regard to one of their own clerks, in the same position in which Mr. Gilmour stood in relation to Mr. Patton and the Plaintiff. Mr. Railton had observed, "If he likes the girl, let him marry her." Mr. Gilmour said, "*it would never do*;" she was a person of loose character, and had been kept by a gentleman in Montreal," and Mr. Railton had no doubt that the word "whore" was also used. Where was the good motive here? where the justifiable end? how was that statement connected with the ordinary course of the lawful business of the office. Mr. H. considered it a waste of time, and almost an insult to their common sense, for him to remark farther upon his learned friend's confidential-communication excuse, but he had dwelt upon it somewhat in consequence of the appearance of plausibility which it first presented. If Mr. Patton's absence from the office and co-habiting with the Plaintiff, justified Mr. Gilmour in stating to third parties, or to Mr. Patton himself, that *it would not do to marry her*—and that she was a loose character—and that she had been kept in Montreal, then he (Mr. H.) was willing to confess himself most profoundly ignorant as to the law upon the subject, and as to what was meant by an *excuse* or *justification*. Still, he could not refrain from expressing to them his own humble opinion, that the speaking of the words was, beyond all doubt, malicious, and did not flow from an honest and sincere desire, on the part of the Defendant, to execute a private duty, as was then pretended.

The next point they had to consider was, whether, or not, the use of the slander concerning her by Mr. Gilmour had caused the loss of her marriage. A very brief reference to the letters which had been produced by the Plaintiff would shew what had been the ardor and intensity of Mr. Patton's affection for her. (Mr. Holt here read from the letters those passages which had reference to an union between those two persons, and which shewed that Mr. Patton's passion was not unrequited.) They, (the Jury) could entertain no doubt that they were engaged to one another. Then came the question, what part had Mr. Gilmour in preventing the marriage? To return, for a moment again, to Mr. Railton's

testimony—he had suggested, in the conversation with the Defendant, the propriety and expediency of James Patton's marrying her—but the Defendant said *it would never do*, for the reason so often already alluded to. Then James Patton himself had admitted that Mr. Gilmour had told him *not to marry her*, unless he had a strong affection for her, and that "he would probably have married her, had she not borne the notorious character that she did," (according to him.) Then where had Mr. James Patton got this "notorious character" of her, if not from the Defendant. Mr. James Patton had forgotten to explain that, and when he gave his evidence he had also forgotten, until reminded, that in his letters to the Plaintiff he had alluded to the interference of the Defendant in their affairs. Mr. H. begged to direct the attention of the Jury again to two or three of the many letters which had been read to them; and particularly to the letters marked C and F. Letter C ran as follows: "Dear Caroline—Serious circumstances prevent me going to see you until next Saturday or Sunday when I will fetch you some money—I am now an outcast and disowned by my own family—I am residing at Begin's, Mr. G." (by whom, the witness admitted, was meant Mr. John Gilmour, the Defendant,) "*has offered me a fine salary and situation on certain conditions with which you are connected. I will tell you all on Sunday—don't attempt to come over here, Caroline, if you really love me. Dear Caroline, I am fretting my existence away—you are my sole thought—remain where you are until you see me—if possible write per bearer, he is a person in which I can place every confidence. Ever your affect. "JAMES" "April 25th 1858."* Letter F ran as follows: "Dear, dear Caroline—You excuse me most wrongfully—I would have met you according to promise but I was out of Quebec. I was up for a raft at St. Augustin and only returned on Monday evening. I again asked Mr. G. to let me have some money and he said he would do so on the conditions you are already aware of." Why had the "fine salary and situation" been offered by Mr. Gilmour to Mr. Patton? Was it to secure a continuation of the services of the latter and induce him to lead a more virtuous life for the future? Without doubt, the motive would then have been good—but was such a motive consistent with the advice given by Mr. Gilmour *not to marry her*? Was it not rather much more likely that Mr. Gilmour's end, if a proper one, would be more easily attained by a recommendation to this reckless young man to marry this lady to whom he was so fondly attached and who had borne him a child? Could it be doubted, then, that Mr. Gilmour's influence and misrepresentation of the Plaintiff's character had prevented this marriage? Mr. James Patton's now swearing to the contrary would go for what it was worth. Although in the first part of his testimony he admitted that he would have married the Plaintiff but for the "notorious character" that she bore, he had very slight scruples afterwards in assigning another reason which proved him to be equally regardless of truth and destitute of feeling. "*He refused to marry her, because she consented to remain his*

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"paramour." Of all the impudent and cruel falsehoods with which his evidence was studded, this was the most gross and palpable upon its face. Would any man in Court believe that a woman possessed of the good qualities, and of the personal attractions and accomplishments ascribed to the Plaintiff by the numbers of respectable witnesses who had been examined on her behalf, whose hand had been sought in marriage by him who afterwards betrayed her, would prefer the unhappy state of a kept mistress to the honorable condition of a wife. If he had refused to marry her, there must have been a demand on her part, and he (Mr. H.) thought it would take all the ingenuity of his learned friend opposite to shew that when a woman demanded the fulfilment of a promise of marriage she thereby expressed her consent to remain a mistress. But the logic of the defence had been pretty much the same throughout.

The question next in order, to be passed upon by the Jury, as settled by the Judges before the trial, was, at what time was the Plaintiff first informed that the Defendant had published the said slanderous matter concerning her? As they had observed, the Plaintiff's Counsel had offered proof on this head, but his Honor had ruled, that as the words, if spoken, were proved to have been spoken within a year and a day of the bringing of the action, it became unnecessary for the Plaintiff to establish at what time she obtained a knowledge of them.

The next point which presented itself for the consideration of the Jury, was one very deeply interesting to the Plaintiff. They were required to find what was her general character at the time of the slander. He (Mr. H.) did not think that upon this point the evidence was at all conflicting. It was true that the two Pattons and one or two others who were the jackals of that lion, the Defendant, had endeavoured to paint her as a lewd and abandoned woman, but their malignity, was too evident, and defeated itself. They had had evidence before them, of the highest character, that, previously to the unlucky day when she entered the Pattons' house, she was a person who enjoyed the respect and esteem of those who were intimately acquainted with her, and at no time had any aspersions been cast upon her except such as were based upon her connection with Mr. Patton, Jr. The learned Counsel for the Defendant had laboured much to show that the mere fact of her having borne a child, not being married, was quite sufficient evidence that her character was generally bad, but the learned Counsel had not been candid enough to refer at the same time, to the fact that her hand had been sought in marriage by the witness James Patton, and that, in the hope that he would still perform the promise, she had borne neglect and reproach for his sake, until he basely deserted her. Stern morality could not excuse the fall from virtue which had made her his victim, but he (Mr. H.) had yet to learn that the woman who merely loved not wisely, but too well" must necessarily be what was commonly called a "bad character." They, the Jury, were not now to decide whether it was right or wrong in a woman to be seduced, but a far different question, viz; whether or not

at the time or times, when Mr. Gilmour represented the Plaintiff as a person of "loose character" and as a woman who "had been kept in Montreal," she was in point of fact, a person whose character was "generally bad." Upon this point, the evidence in favor of the Plaintiff was overwhelming. The circumstance of her having visited Mr. Gisborne, at the Telegraph Office, and remaining alone with him in a room for some time, was a presumption of very little weight indeed, when it was remembered that that gentleman was an acquaintance of many years standing, of whose respect and esteem she was possessed, who had acted the part of a brother, and proved a fast friend, when those of the same blood as herself had deserted her. In another case then pending before the Court, Mr. Gisborne's evidence as to her character had been taken by commission in Prince Edward Island; that commission was now on its way to Quebec, and he (Mr. H.) much regretted that he was not in a position to lay its contents before them.

He (Mr. H.) then came to the last point,—What damages had the Plaintiff suffered, and at what sum would they assess them? The damages suffered by the Plaintiff were special, and they were general also. But for the Defendant, she might now have been an honored wife, her child legitimated, and her husband an industrious and useful member of society. The one grave error would have been repaired, and years of happiness might have been in store for her. But what had been the consequence of the Defendant's act? Her lover had deserted her and cared not if with her child she perished in the streets. Her friends would not come near her, there was hardly a soul with whom she could exchange the good offices of friendship, the peopled streets were a desert to her. This was no mere flourish in an advocate's speech striving to do the best for a client, but a sad truth to which he could testify. She had not been utterly ruined, but she would probably have been so, had she not in the hour of her distress, received the aid of one or two generous but unknown friends. That she had not been driven to the worst extremity by despair, did not palliate the guilt of the Defendant. He had done what he could.—With respect to the amount of damages, the Honorable Judge would tell them that in actions of this kind, juries acted altogether without control, provided only that their verdict did not spring from passion, prejudice, or corruption. They would also be told that it was in their power to inflict damages for example's sake as well as by way of punishing,—that the law blended together the interest of society, and of the aggrieved individual, and that it was proper that they should take into account the circumstances, rank and condition of the Defendant, that his ability to pay, legitimately entered into the estimate of compensatory damages, because a dollar was worth more to a poor man than ten times as much to a rich one. Unless this rule were acted upon, there would be no protection against the powerful and wealthy, who might spend their money upon vicious caprices, and purchase them as luxuries. He (Mr. H.) therefore trusted that if they should judge Mr. Gilmour guilty, they would award to the Plain-

tiff so heavy a sum that it would convince great offenders that they could not slander their neighbours with impunity.

His learned friend had permitted himself to say that this action was nothing else than a speculation upon the purse of Mr. Gilmour. It was not without some surprise that he had heard so experienced a professional gentleman resort to so threadbare a defence. Had any of them (the Jury) been present in Court at any time when actions of damages were being pleaded, and had not heard the Counsel for the Defendant with an abundance of virtuous indignation declaim against the mercenary and sordid motives of the Plaintiff? He could tell his learned friend that the Plaintiff in this cause cared little for Mr. Gilmour's gold; but, having learned that he was the cause of the alienation of Mr. Patton's affections and of her subsequent misfortunes, she had not hesitated to compel him to appear before them, merely because he was a rich man. It was no light undertaking that of calling to account one of the wealthiest and most influential men in the community; but there was no alternative between that and a for ever blighted name. Had she a father living, had she had a brother, the Defendant would not have dared to breathe a word against her fame. She had no relatives or friends to espouse her cause, and had to choose between lasting disgrace and contumely, and a suit-at-law with the Defendant. It was for them to pronounce that day if she had done well: she placed her fate in their hands; she had peculiar claims to a careful and patient examination of her case. He (Mr. H.) did not pretend that she was a paragon of perfection; she was nothing more than a young, refined and educated woman, perhaps impetuous and headstrong, frank and affable in her manners, with no *mauvaise honte*, but speaking her mind freely; not one of those young misses who sat with their hands crossed and answered with "Yes, Sir" or "No, Sir," but one who always meant what she said and was but too ready to believe that every body else did so too. If her deportment was not exactly such as her friends could have wished, it was, perhaps, because at an early age she had lost a father who, whatever his defects may have been, was an honest man, and had been compelled, through harsh treatment, as had been stated by some of the witnesses, to leave her mother's roof. She had since been dependant upon her own exertions for a livelihood, although some of her near relatives in this City were not without means. He (Mr. H.) trusted that her unprotected state would, in their (the Jury's) eyes, be in some measure an excuse for the giddiness of character which had been ascribed to her. He could not refrain, and he hoped they would not deem him guilty of the baseness of an attempt to flatter them when he said it, he could not refrain from felicitating his client upon the composition of their body as a Jury. While she saw before her men, most, if not all, of whom were entirely unacquainted with her, and with whom she had no relations of any kind, and yet some of whom might be well acquainted with the Defendant and have business relations with him, and while she saw that she could not expect, even had she desired it, that there should be a leaning

towards her, unconnected with the justice of the case itself; on the other hand, she felt no apprehension lest they should be moved or influenced by the great power and wealth of the Defendant. Without fear of injustice, she placed her case before them. He (Mr. H.) begged to thank the Jury for their patience in listening to him; he might have been tedious, but he was oppressed with a sense of the magnitude of the interest which his client had then at stake. He had not attempted to enlist their feelings on her behalf, but had directed all his efforts to carrying conviction to their minds. The Plaintiff had been sorely tried, but he believed that relief from oppression was now at hand.

His Honor Mr JUSTICE CARON charged the Jury as follows:—

GENTLEMEN.—You have given your attention with great patience to this trial, and all that now remains to be done, before you retire to deliberate upon the verdict to be rendered, is that I should perform the duty which the law has imposed upon me of putting you in possession of the principles of law which govern cases of this kind, and of remarking upon the rules of evidence applicable to them under the system of laws in force in this Country; and if I advert to the facts brought out before you in evidence, I shall do so with the view of helping you to come to a right conclusion, though I would have you fully understand that while juries are bound to take the law of the case from the Court, they are the sole judges of all matters of fact, and therefore you are quite at liberty to adopt such opinion as may seem best to you, upon the facts of this case, without being required in any way to attach weight to any different opinion respecting them which may be expressed by me.

The present action is for verbal slander, an action which in French should be called—*en dif-famation de caractère*.

The Plaintiff in her declaration accuses the Defendant of having stated that "she was a whore," and that "she had been kept by a gentleman in Montreal." If this be true, she has suffered a very great wrong indeed at his hands. Now, gentlemen, with respect to the proof, it is proper that I should tell you that our law requires two witnesses in actions of this kind, and indeed, in proof of all facts which are not of a commercial nature. I do not mean to say that two witnesses to every particular matter of fact are necessary, but that the statement of one witness alone as to a fact is insufficient, and that an action of this nature cannot succeed unless you find that there are two or more witnesses supporting or confirming each other in their testimony concerning the facts alleged. You will have to consider whether Mr. Railton who has testified as to some of the words laid in the declaration, speaks with a sufficient degree of positiveness, and whether there is anything said by any of the other witnesses which corroborates his testimony. I have to tell you, however, that it is not necessary that you should be satisfied that the precise words are proved, the requirements of our law and jurisprudence are met, if the Plaintiff establishes that words or expressions, in substance or effect the same, have been used. It is your pro-

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vince to weigh the evidence, and form your own conclusion, and I do not think it necessary that I should express any opinion whatever as to its weight or tendency. You will also have to decide whether the words have been spoken maliciously, or not. You have been told, very properly, that there are two kinds of malice—malice in law, and malice in fact; and that malice in law alone is sufficient to support the action. This malice is presumed to exist, from the very speaking of the words; but it may be rebutted by the evidence that the words were spoken on some lawful occasion, for a good cause, under circumstances that amount to a legal excuse. You will bear in mind all the facts and circumstances attendant upon the speaking of the words, and you will have to consider whether or not, at the time, the Defendant kept himself within the limits of a fair and confidential communication—upon this point, also, your decision must be uninfluenced by me, but I am sure that your intelligence will enable you to come to a proper determination upon it. You will weigh well the whole facts, for it is strongly urged by the Defendant, that the communication complained of, if made at all, was made in the performance of a private duty, and was strictly confidential. [Here the Honorable Judge read from Greenleaf on Evidence the opinions of learned Judges in England, to the effect of establishing that the Jury should deal liberally towards a defendant having spoken words, which, though injurious to the character of a plaintiff, had been so spoken confidentially, and either in the discharge of a duty, or in the common course of business.]

The damages which the Plaintiff alleges she has suffered are special and general; if you say that you are of opinion that by reason of the representations made by the Defendant concerning the Plaintiff, she lost her marriage with Mr. James Patton, who otherwise would have married her, you will allow her such damages as you may consider a fair compensation for the wrong—if you consider that it is not proved that that was the cause of the breaking off of the engagement between them, you will then have only to direct your attention to the question of general damages, for though the words may not have had the effect which she expressly alleges that they have had, it is urged on her behalf that they naturally have the effect of injuring her character and reputation in the eyes of the community. These are also questions exclusively within your province;—as to the question of prescription pleaded by the Defendant you have already been told that the prescription established by the French Law, which is to be followed in this case, against verbal injuries does not run from the day that the injurious words have been spoken, but from the day that the utterance of these words has come to the knowledge of the Plaintiff; that the Defendant to avail himself of such a prescription ought to have proved that there was more than a year that the Plaintiff was aware that the Defendant had slandered her, when she brought her action. The Defendant has made no such proof; you have, on the contrary, the affirmation of the Plaintiff that it was not long before the date of the action that she was informed of the

facts of which she complains; she is, according to law, to be believed on her affirmation unless the contrary be established; this has not been done in the present case, and therefore, the Defendant not having proved his plea of prescription, you may dismiss it from your attention as altogether immaterial to your determination. The only plea put in by the Defendant to the merits of the action was a general denial which, under the practice in England and here, puts in issue not only the speaking of the words and the malice, but also the general character of the Plaintiff. This is not the rule in the United States, where it has been rejected on the ground that it is unjust toward a plaintiff, to permit a defendant, who does not justify or plead the truth of the charges, to attack the character of the plaintiff and offer in evidence circumstances which have a tendency to prove, under the general issue, what cannot be proved under such a plea, viz.: the truth of the words. The English rule that the general bad character of the Plaintiff may be given in evidence under the general issue, in mitigation of damages, is based upon the proposition that a man of already tarnished reputation cannot have received much damage by the speaking of the slander. In this case the Defendant has brought forward evidence, with a view of mitigating the damages, to shew that the Plaintiff's character was generally bad; it is for you to decide whether his witnesses have proved this, or whether the witnesses called on her behalf establish the contrary. In considering the evidence which bears upon her character, you are not at liberty to found your judgment upon any particular acts. It has been shewn to you that at an early age she was deprived of that parental care, which, if continued longer, might have protected her from many of the cares and troubles to which she has been exposed, and that for many years she has been dependant upon the exercise of her own talents for her support, and you have been appealed to not to condemn too severely her faults which have arisen from her unprotected state and not from depravity or wickedness. What you have to do with is her general character, and it is your duty to find what it was at the time of the speaking and publishing of the alleged slander. Then with respect to the question of damages, you have been very properly told that offences of this nature are offences against society as well as against the individual, and that damages are given to serve for example as well as punishment—that juries act, in apportioning the amount, without control by the Court, and that it is proper to take into consideration, the rank, ability, and circumstances of the Defendant, and also the position of the Plaintiff; if you are of opinion she has been wrongfully injured, you must grant her an indemnity equal to her loss; for it is not because the Defendant is proved to be rich that you must grant to the Plaintiff more than she may have lost. The whole matter is now left in your hands; from your respectability and intelligence I am convinced that the decision to which you will come will be right and just.

The Jury were asked if they wished to retire, but

Mr. STUART requested that the notes of the evidence should be read over to them, which was accordingly ordered to be done by the Court. The evidence having been then read over,

The Jury retired to deliberate upon their verdict; and, in about an hour, informed the Court that they were agreed.

Upon stating to the Court, through Mr. Geo. Hall, their Foreman, their finding upon the first question, it was remarked by the Court that they had omitted to find the *time* and *place*, and they were informed that it was material that they should find "when" and "where." They retired again, and in a quarter of an hour returned their verdict as follows:—The Clerk of the Court reading the questions—

1. Did the Defendant speak and publish of and concerning the Plaintiff the defamatory words set forth in the Plaintiff's declaration, or any and which of them, and at what time and place?

Finding—These words, or words to the same effect, were made use of by the Defendant of and concerning the Plaintiff at Quebec, between Christmas, 1852, and February, 1853,

at the office of Messrs. Gilmour and Company.

2. Were the said words so spoken and published by the Defendant maliciously?

Finding—Yes.

3. Did the Plaintiff thereby lose her marriage, as alleged in the said declaration?

Finding—Yes.

4. At what time was the Plaintiff informed for the first time that the Defendant had spoken and published the said words of and concerning her?

Finding—We cannot say.

5. What was the Plaintiff's general character at the time the said words are proved to have been uttered and published of and concerning the said Plaintiff by the Defendant?

Finding—Generally good.

6. Hath the Plaintiff suffered damage by reason of such scandalous and defamatory words, and at what sum do you assess the said damages?

Finding—We award to the Plaintiff the sum of £600 currency, damages.

And so say we all.

(General applause.)

The Jury were then discharged.



